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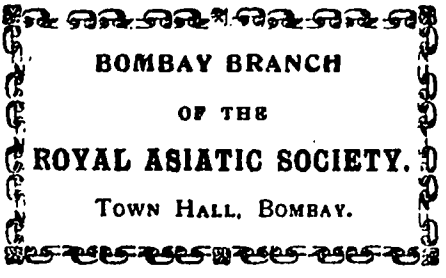

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Edw. Livingston

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LIFE

OF

EDWARD LIVINGSTON.

BY

CHARLES HAVENS HUNT.

WITH AN INTRODUCTION

BY

GEORGE BANCROFT.

Y Y-A-73

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TO

A. DE P. H.

WHO HAS WATCHED THE COMPOSITION OF THE FOLLOWING CHAPTERS WITH A STEADIER INTEREST THAN THEIR TOPICS ALONE COULD HAVE INSPIRED, THE WRITER DEDICATES HIS WORK.

PREFACE.

HAVING been intrusted by the Editors of the "New American Cyclopædia" with the task of preparing the notices of Robert R. and Edward Livingston which appeared in that work, I conceived an unexpected interest in the career of the younger of these brothers, and resolved to write a more extended sketch of his life, such as the public and common sources of information would enable me to do. In pursuance of that plan, a considerable part of the following work was composed, including the chapters upon the Livingston genealogy, the first congressional career of Edward Livingston, his controversy with Jefferson, and his system of penal law, which were finished in their present form. I was proceeding to fill up other parts of the outline, when an acquaintance which I formed with Mr. and Mrs. Thomas P. Barton, the only survivors of Mr. Livingston's immediate family, led to my acquisition of the best materials for the remainder of the work. Besides taking the greatest pains to satisfy all my particular inquiries, they in the kindest manner, and without reserve or material restriction, placed in my hands the whole mass of papers left by Mr. Livingston at his death, a collection, it needs hardly be said, of great interest and value, as well for more general

researches as for that to which my attention was devoted.

In the use which has been made of these materials I have followed very strictly my own judgment and method, which was to confine myself to the presentation of such matter only as would place in the best and plainest light the genius and character of a man, an account of whose life, both full and concise, I thought our American biography not rich enough to well afford to dispense with.

I have received valuable hints, pieces of information, or clews to information, from several other friendly hands. Among these I may mention by name the late Honorable Charles J. Ingersoll, the late Honorable Henry Carleton, (both of whose communications, though given with true vivacity, were spoken from the very door of the tomb,) Mrs. Joseph Delafield, Mrs. Henry D. Gilpin, Miss Mary Garretson, the Honorable George M. Dallas, the Honorable Gulian C. Verplanck, the Honorable George Bancroft, David Codwise, Esquire, Augustus R. Macdonough, Esquire, A. Judson Kneeland, Esquire, W. Coventry H. Waddell, Esquire, Henry B. Dawson, Esquire, George H. Moore, Esquire, and William Henry Forman, Esquire.

The late Honorable Henry D. Gilpin, who was Attorney-General in the cabinet of Mr. Van Buren, and one of the most accomplished among American public men, enjoyed a long political and personal intimacy with the subject of this volume. He was the author of the sketch of Mr. Livingston which appeared, before the death of the latter, in the "National Portrait Gallery." He afterwards read a necrological notice of Livingston before the American

Philosophical Society, which has been published. And he intended, and began to write a more extended life of his friend, for which purpose he had in his possession the same manuscript materials which I have now employed. But he had not proceeded far in this task when its fulfilment was precluded by his own untimely end.

I am enabled to introduce my work by an estimate of the character of its subject, made by one whose studies all will recognize as qualifying him in an eminent degree to compare Livingston with the founders of the Republic. It is a satisfaction to find that my own impressions do not differ from those of the distinguished author of the Introduction, who, as it may be proper to say, is not responsible for any of the views or expressions in the text, of which he did not see any part until after it was printed.

C. H. H.

New York, November 18, 1863.

INTRODUCTION.

THE domestic virtues, the sweetness of temper, the charm of untroubled cheerfulness combined with high ability and culture, endeared Edward Livingston to his family and private friends; for the country his life derives its interest from his intimate relation to the great epochs of its recent history.

Descended from families which at an early period came over from Scotland and from Holland, he had from childhood, in the conduct of his father, an example of a wise and deliberate support of liberty against the aggressions of authority, at a time when America held her liberties as colonies, and had to defend them against the king and the parliament of Great Britain.

As he was just passing out of the years of boyhood, the great event that instilled into his mind and affections the principles which he was to follow for life was the American Declaration of Independence; and this he took to heart with a peculiar interest, as his eldest brother, the guide of his early life, was one of the five to whom the framing of that instrument was intrusted.

The country was found to languish in the prosecution of the war, from a want of executive unity,

and for this a remedy was sought in the appointment of individuals to manage the several departments; as a consequence, the elder brother of Edward Livingston became the first American Secretary for Foreign Affairs, and while in that post took the prominent part in recognising the most generous code of maritime freedom as the rule of the United States. In this manner the younger brother grew familiar at once with the most liberal system of international law, and the necessity of a closer and firmer cohesion of the integral parts of his country.

The inefficiency of the confederate government having been proved by experience in war and in peace, the United States proceeded to the greatest achievement in the civil history of man, the formation of a more perfect Union, by the deliberate act and choice of the people. Of all the old thirteen States, New York should have been first in its zeal for the advancement of that sublime design: what evil spell of party spirit, what mistaken interpretation of the traditions of the past, what selfish, unenlightened narrowness, what unreasonable transfer of the well-founded jealousy of the power of king and parliament to the power of the people, could have led the State which should have been the eye and the guide of the nation, to doubt and seemingly resist the policy which was so fraught with blessings? There again the elder brother of Edward Livingston separated himself from his misleading political friends, and in the hour of greatest need gave his influence and his voice for the new triumphant Union. At this moment both brothers were inspired by the same anticipation of the glory of their country and the advancement of the best interests of man.

Thus far Edward Livingston had been subordinate, and his opinions and zeal were effaced by the superior publicity and importance of the efforts of his brother; the time was come for his own public service. The Union was established, but even in the period of the Father of his Country it encountered one insurrection, and before John Adams had been a twelvemonth in the presidential chair, the largest State in the Union prepared by separate action, as its statute-book shows and its historian records, "to fight for her sovereignty." How to meet the danger was the question that agitated the nation: one party saw safety in aggressive acts of legislation, tending to restraint on the free expression of opinion, and to a dangerous exercise of discretionary power; the other sought to anchor the Union in the affections of the people. It was on this occasion that Edward Livingston first became known to the country by pre-eminent activity; and it was with his marked and most effective concurrence that the support of the Union was incorporated into the creed and the heart and the life of the democratic party. "We are all federalists, we are all republicans," was the official summing up of the result; the Union was set high above political conflict as the dearest possession of all; the executive powers were maintained and exercised in their plenary significance; and the government gained time to harden into firmness and endurance. It was even said that the powers of the General Government were enlarged.

Simple and frugal in his personal habits, he yet was overtaken by the severest calamity in his fortunes. Struck down by the yellow-fever, caught from his visits of consolation and mercy to the sufferers among

the poor during the raging of that disease in New York, he recovered from a desperate illness to find that he had been defrauded by a clerk, and that he was a debtor to the government beyond his means of immediate payment. Without a word of complaint, crimination, or excuse, he at once devoted his inheritance, his acquisitions, the fruits of his professional industry, to the discharge of his obligation to the government, and, for near a score of years, gave himself no rest, till he had paid it, principal and interest, without defalcation.

The acquisition of Louisiana opened a new field of activity to Edward Livingston, for he transferred his home to New Orleans, and the gentleness of his character, his decision, and his wisdom pointed him out as the fit legislator to blend harmoniously the conflicting elements of the territory. We had ransomed it from servitude to European masters with a price; we gave a charm to that ransom by redeeming its French and Spanish inhabitants into civil equality and the fullest enjoyment of our highest political rights; we took no way to bind them to the Union forever, but by welcoming them as brothers to all its unequalled advantages and powers and hopes. It fell to the lot of Edward Livingston, as a legislator, to adjust the old municipal laws, derived from France and Spain, to the new condition of the connection with America. How great was this service may be judged by a comparison of the process in Louisiana with a similar process in the annexation of Canada to the British empire.

The country became involved in war: here Livingston, essentially a man of peace, was able to render effective aid; his habit of doing justice to men

of every nation had made him the friend of all, and the unity of action of all the races of Louisiana in the defence of the common country may in some measure be traced to the timely wisdom of his counsels.

Once more the conflicts of party turned on the question of the preservation of the Union. A spurious aristocracy claimed a right for every State which they could rule, to nullify the laws of the United States to such an extent as would have made the Constitution like a ship at sea, water-logged, and at the mercy of every wave of political cupidity or passion. The salvation of the country turned on the right interpretation of the principles of democracy. Jefferson, its early leader, was no more; but Madison lived long enough to expound its acts and resolutions of former days; and Jackson, as President of the United States, having Livingston as his adviser, gave authority to that exposition. Who that looks back upon those days does not rejoice that the chief magistrate was Jackson, and that his adviser was Edward Livingston, who to the clearest perceptions and the firmest purpose added a calm, conciliating benignity and the venerableness of age, enhanced by a world-wide fame?

That fame was due to the fact, that Edward Livingston, more than any other man, was the representative of the system of penal and legal reform which flows by necessity from the nature of our institutions. The code which he prepared at the instance of the State of Louisiana is in its simplicity, completeness, and humanity at once an impersonation of the man, and an exposition of the American constitutions. If it has never yet been adopted as a whole, it has proved

an unfailing fountain of reforms, suggested by its principles. In this work more than in any other may be seen the character and life-long faith of the author. The great doctrines which it develops will, as time advances, be more and more nearly reduced to practice, for they are but the expression of true philanthropy, and, as even the heathen said, "Man loves his fellow-man, whether he will or no."

GEORGE BANCROFT.

New York, 14 November, 1863.

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LIFE OF EDWARD LIVINGSTON.

CHAPTER I.

LIVINGSTON MANOR AND THE LIVINGSTONS.

THE Livingstons of the State of New York have a long and genuine pedigree, — one that is so easily verified and embraces so many important individual names, besides showing a certain continuity of strong character outlasting many generations, as perhaps to render pertinent in this place a sketch of it more extended than commonly befits the biographical notice of a prominent man belonging to one of our republican families.

On the death of James I. of Scotland, in 1437, Sir Alexander Livingstone, of Calendar, was appointed by the estates of the kingdom one of two joint regents during the minority of James II., being himself made Keeper of the King's person, while his associate, Crichton, received the office of Chancellor. Buchanan and others relate minutely how the two regents quarrelled; how the Queen-Dowager sided with Livingstone; how the Chancellor got possession of the King, and kept him in Edinboro' Castle; how His Majesty's mother, by a stratagem, delivered him back to Sir Alexander; how a difference of opinion between the latter and the royal matron sprung up, which ended in his putting her in prison; how Crichton, by another strategem, got possession of the youth a second time; and how all parties

thereupon came to a reconciliation which restored the monarch to his lawful guardian. The latter thenceforth experienced several vicissitudes of public disgrace and favor, and died soon after being appointed, in 1449, Justiciary of Scotland and Ambassador to England.

Among the exploits of this Sir Alexander, performed in conjunction with his late enemy, Crichton, was one of those treacherous and horrid murders, which the gentlemen of his day sometimes indulged in with impunity and royal approbation. The story is thus related by Burke: —

"Soon after their reunion, Livingstone and Crichton, dissembling their intentions, asked the Earl of Douglas to sup at the royal table, in the Castle of Edinburgh; the Earl was foolhardy enough to accept the invitation, and proceeded to his sovereign's presence. At first he was received with apparent cordiality; but shortly after he had taken his place at the board, the head of a black bull, the certain omen, in those days, in Scotland, of immediate death, was placed upon the table. The Earl sprang to his feet and attempted to escape; but being speedily seized and overpowered, he was hurried, along with his younger brother, David, and Sir Malcolm Fleming of Cumbernauld, one of his chief retainers, into the court-yard of the Castle, where they were stripped of their armor, and all three in succession beheaded on the same block. The death of the young and princely Earl of Douglas excited universal detestation, and his untimely fate was lamented in the ballads of the time: —

'Edinboro Castle, Toune and Toure,
God grant thou sink of Sin,
And that even for the black dinoure
Earl Douglas gat therein.'" *

* *Vicissitudes of Families*, Second Series, 1860.

The family of Sir Alexander then claimed considerable antiquity, and a Hungarian origin. He was the ancestor of a large race, which numbered many active spirits during the turbulent centuries which followed. His son James became the first Lord Livingstone. Alexander, the fifth lord, through whose line the Livingstons of New York branch from the family tree, was one of the two guardians of Mary Stuart, Queen of Scots. His appointment to that office was in 1543; in 1548 he accompanied his royal ward to France, and he died in that country in 1553. His daughter, Mary Livingstone, was one of the four Maries, playmates and maids of honor to the queen. Some gossip respecting the circumstances of her marriage with the son of Lord Sempill makes one of the characteristic pages of John Knox's lively "Historie of the Reformation of Religion within the Realm of Scotland."

In 1600, Alexander, the seventh Lord Livingstone, was created first Earl of Linlithgow, a title which descended to the fifth earl, who, in 1713, was made a peer of the United Kingdom. Two years later, the latter joined the Earl of Mar and the cause of the first Pretender. He lost his earldom in consequence, and it has not been restored to his descendants.

The first Earl of Linlithgow had four brothers, the third of whom was, in 1625, made a baron of Nova Scotia. This title came to the eleventh and present baronet, as he claims to be, Sir Alexander Livingstone, in 1853. He is also, as he alleges, the heir and representative of the attainted Earl of Linlithgow, whose lineal race is extinct. The claim of Sir Alexander is, however, at present, the subject of litigation. The tenth baronet dying childless, his younger brother, Thurstanus, the father of Sir Alexander, is the medium through whom the lat-

ter claims the succession. This Thurstanus, though the brother of an admiral, had gone to sea as a common sailor, and, after leading a life in all respects on a level with that vocation, died in great poverty in 1839, at the age of seventy years.*

Three other titles, with estates, were conferred upon enterprising younger sons of the House of Livingstone: the Earldom of Calendar, in 1641, which in the course of descent became merged in that of Linlithgow; the Earldom of Newburgh, in 1660, which is now extinct; and the Viscountship of Kilsyth, in 1661, which was forfeited by the heir in the Rebellion of 1715.

But to return, for the clew which leads to our subject, to the fifth Lord Livingstone, guardian of Mary Stuart. His son, John Livingstone, being slain at the Battle of Pinkiefield, in 1547, was succeeded by a son, Alexander, the first of three generations of ministers of the Scottish church. The latter and his son William, whatever may have been their labors or their virtues, appear to have made no such noise in the world as leaves any posthumous echo, and, but for the circumstance of their having served as links between generations of more conspicuous men, could never have received mention in any book written at a time so remote from their own as the present. But the Reverend John Livingstone, son of William and grandson of Alexander, was a celebrated preacher, was prominent in Scottish ecclesiastical history, and, in 1650, was one of the two commissioners appointed on the part of the kirk to proceed, in conjunction with those commissioned by the Parliament, and to negotiate with Charles II. at Breda the terms of that king's admission to the throne of Scot-

* These matters are stated with much detail by Sir Bernard Burke in the volume just referred to.

land. His birth was in 1603, and his death in 1672. The last nine years of his life were passed at Rotterdam, whither he had retired under a sentence of banishment for non-conformity at home. Before his exile, he had been settled successively at Killinshie, at Stranrawer, and at Ancram. He left an autobiography,* especially interesting to his religious denomination, and historically very curious as an account of these negotiations at Breda, from a spiritual and theological point of view.

His son Robert — the founder of the far-spreading race of Livingstons in the New World — was born at Ancram, in Teviotdale, Roxburghshire, Scotland, in 1654. The clerical temper did not descend to him. His spirit was of too adventurous a cast to permit his taking to the calling or life of his father, grandfather, and great-grandfather. He was ambitious, shrewd, acquisitive, sturdy, and bold. His whole career was a persistent illustration of the motto upon the scroll of his ancestors' coat of arms, — "*Si je puis.*" And when, on the occasion of being shipwrecked, as will be presently mentioned, he adopted for his own shield, together with a disabled ship for a crest, "*Spero Meliora,*" he expressed well the most salient trait of his character, as afterwards developed in the sternest trials. His father's exile had been the occasion of his learning the Dutch

* Several editions of this work have been published, the latest being that of The Wodrow Society, Edinburgh, 1845. The reverend author begins with the following statement: "My father was Mr. William Livingstone, first minister at Monyabrock, where he entered in the year 1600, and thereafter was transported about the year 1614 to be minister at Lanerk, where he died in the year 1641, being sixty-five years old. His father was Mr. Alexander Livingstone, minister also at Monyabrock, who was in near relation to the house of Callender; his father, who was killed at Pinkiefield, *anno Christi* 1547, being ane son of the Lord Livingston's, which house thereafter was dignified to be Earles of Linlithgow."

language. His first step in life, on attaining full age, was to plunge into the wilderness of New York, along the upper Hudson. Albany, then a village of Dutchmen, became his residence. He was very soon appointed secretary of the board of commissioners who had charge of "Albany, Schenectady, and the parts adjacent." This office he held until Albany became a city, in 1686. Three years before, he had married Alida, widow of Rev. Nicholas Van Rensselaer, whose maiden name was Schuyler. He and his brother-in-law, Pieter Schuyler, were formally charged with the mission of proceeding to New York and receiving the new city's charter from Dongan, Governor of the colony.

During the three years preceding 1686, Robert Livingston had, with the consent of the colonial governors, effected several purchases from Indians of large tracts of land, adjacent to each other, and together forming a domain commencing about five miles south of the present city of Hudson, and having, on the eastern shore of the Hudson River, a front of about twelve miles, extending to the boundary between New York and Massachusetts, upon which side it was about twenty miles broad, and embracing upwards of one hundred and sixty thousand acres. The first conveyance, dated July 12, 1683, was of two thousand acres on Roelof Jansen's Kill. The deed was executed by two Indians and two squaws, whose names it is difficult to write and impossible to pronounce. The consideration expressed was the purchaser's promise, "to pay to the said Owners these following Goods in the time of five days to Wit three hundred guilders in Zewant, Eight Blankets and two Childs Blankets, five and twenty ells of Duffels and four garments of Strouds, ten large shirts and ten small ditto, Ten pairs of large

stockings and ten pairs of Small; Six Guns, fifty pounds of Powder, Fifty staves of Lead, four caps, Ten Kettles, Ten Axes, ten adzes, Two pounds of Paint, Twenty little Scissors, Twenty little looking-glasses, one hundred fish hooks, Awls and Nails of each one hundred, four Rolls of Tobacco, one hundred Pipes, ten Bottles, Three kegs of Rum, one Barrel of Strong Beer and Twenty knives, Four Stroud-Coats and Two duffel-Coats, and four Tin kettles." And the other conveyances are of the same character.*

These purchases were severally confirmed by Governor Dongan, and, on the 22d of July, 1686, he issued to the proprietor a patent, erecting the territory into the Lordship and Manor of Livingston, reserving to the Crown a yearly rent of twenty-eight shillings sterling, payable at Albany on the 25th of March. The patent granted to the proprietor the privilege of fishing, hawking, hunting, and fowling within the manor, and the right to fish in the Hudson River along the boundary; and the possession of all mines and minerals, excepting only gold and silver mines. The grantee was authorized to hold a court leet and court baron, and had the advowson and right of patronage of the churches within the manor. The patent gave the tenants the privilege of assembling to choose assessors, to defray the public charges of cities, counties, and towns within the manor, according to the usages and laws in force in the province at large. The grant was confirmed by royal charter of George I., in 1715, which conferred upon the

* *Documentary History of New York*, quarto edition, vol. iii. page 367. At the foot of one of these conveyances, the following memorandum occurs: "This day, the 18th July 1687, a certain Cripple Indian Woman named Siakanochqui of Catskil acknowledges to have received full satisfaction by a cloth garment and cotton Shift for her share and claim to a certain Flatt of Land Situate in the Manor of Livingston; Which Witness," etc. *Ib.* page 369.

tenants the further privilege of electing a representative to the General Assembly of the colony, and two constables.

No doubt, the lord of the new manor believed he was founding a house and perhaps a title that would endure; an inheritance which would long cohere and expand. But he was not a prophet; for in the third generation after him, the fabric which he had devoted his life to build quietly dissolved under the progress of advancing ideas and changing institutions. If, however, he could have foreseen the actual future of his family, — a vigorous race of great numbers and various branches, including many distinguished and some illustrious men, lights of trade, of politics, of jurisprudence, of legislation, of diplomacy, of divinity, — it would have been enough to satisfy a reasonable adventurer's moderate expectations.

But, whatever his views or his visions may have been, he led a stormy life, and battled hard in order to accomplish the object of leaving his eldest son second lord of the manor. He suffered many particular disasters, but his life was a current of general good fortune. He had several downfalls which, when they happened, appeared to be final; but from every one of them he recovered himself as with a bound. He made two voyages to Europe: in the first, he was shipwrecked off the coast of Portugal; in the second, he was taken by a French privateer, and, as he alleged, "most barbarously used;" yet both these misfortunes he turned to profitable account. He was more than once deprived of his offices by the ascendency of his enemies in the colonial government, but he always contrived to have them restored with additions. He was once denounced, with some show of evidence, as a defaulter; but he

cleared his character, and overcame his defamers handsomely. He was hunted by Governor Leisler, to whose party he was warmly opposed, for treasonable words against the King, which he was falsely and treacherously accused of having uttered; but before he could be arrested, Leisler was himself executed for usurpation and treason. Years later, the Leislerian faction, having again got a preponderance in the colonial councils, declared his estates confiscated, and himself suspended from his right to sit at the council board; but he procured the royal reversal of all this within a few months.

From the income of his half dozen offices, from his agency of Indian affairs, from the profits of various contracts with the Government, and from the rents of his lands, the grantee of the manor gradually grew rich. In 1692, he built a manor-house on the bank of the Hudson, just above the mouth of the stream now called Livingston Creek; but he did not begin actually to reside there till 1711. In the latter year he was elected member of the General Assembly of New York for the city and county of Albany. In that body he continued till 1726, when he withdrew from public life. For the last ten years of this time, he represented his manor under the latest and royal grant. He died in 1728, at the age of seventy-four.

The most notable blunder in Robert Livingston's career seems to have been the patronizing of William Kidd, by procuring for him from the Government a commission to sail against the pirates whose depredations on the Atlantic were then of alarming frequency and dreadful description. Captain Kidd, as every one knows, whatever may have been his first intentions, if story and song treat him fairly, lapsed into a good many immoralities on his own account.

"My name was *Robert Kid*,
When I sailed, when I sailed."

To how many different spots has tradition pointed as hiding-places of his evil and enormous gains! One of the places so designated was upon the bank of the river in front of the ancient manor-house. The present occupant of that site, only a very few years since, discovered a band of superstitious neighbors on the spot referred to, digging at midnight, with appropriate incantations, for the concealed treasure.

Robert and Alida Livingston had five sons and four daughters. Two of the sons and two of the daughters died unmarried. The other three sons were Philip, Robert, and Gilbert. These were born in 1686, 1688, and 1690. In favor of Philip, the eldest, the father had resigned all his offices, excepting his seat in the General Assembly, six years before his death. To him he now left the bulk of his property, including the whole of the manor, except about thirteen thousand acres from the southern part, afterwards known as the Manor of Clermont, or lower manor, which he conveyed to Robert in special consideration of an important service which the latter had rendered, in the detection of a plot formed by negroes for a massacre of the white inhabitants of the neighborhood. To the third son, Gilbert, he gave an estate at Saratoga.

Philip Livingston, second proprietor of the manor, became the patriarch of a large family of his own. His sons of whom most is known, were Robert, Philip, and William, born respectively in 1710, 1716, and 1723. Robert became the third and last lord of the manor. By his will he divided it, like a democrat, fairly among his children, in spite of his eldest son's loud remonstrance, and fervent entreaty

that, for the sake of propriety, he might take the whole.

The last proprietor of the manor died in 1790. His great-grandchildren are numerous men and women of the present generation. His younger brother, Philip, signed the Declaration of Independence. The latter was a merchant of the city of New York, of such talents and character as secured for him great consideration amongst the illustrious men in the Congress of 1776. He died two years after the Declaration, and five years before the War of Independence was ended. The next younger brother, William, was a very eminent man, — a lawyer, poet, editor, and statesman. He was Governor of New Jersey from 1776 until his death in 1790. One of the sons of the latter was Brockholdst Livingston, eminent first at the bar, then on the bench of the Supreme Court of the State of New York, and finally as one of the judges of the Supreme Court of the United States.

The second son of the first lord of the manor, Robert, to whom the lower manor was given, was a man of much learning, character, and influence, and his views of American affairs and destiny were in advance of those of most, if not all, of his countrymen. He died in 1775, an ardent and clear-sighted patriot. He was the father of Robert R. Livingston, a judge of the Supreme Court of the colony of New York, whose death, also, was in 1775. Judge Livingston had, among other children, two sons whose several careers threw lustre upon their family name, their profession, and their country. These were Robert R. Livingston, the first Chancellor of the State of New York, and Edward Livingston, the immediate subject of this volume.

There are many descendants of Gilbert, the third son of the grantee of the manor. The celebrated divine, John H. Livingston, of New Jersey, who is regarded as one of the fathers of the Reformed Dutch church in America, and who died in 1825, was one of his grandchildren.

When the first Robert Livingston returned in 1696 from one of his visits to his native country, he was accompanied by his nephew, another Robert Livingston, who came to reside also at Albany. The next year, the latter married Margaretta, daughter of Pieter Schuyler, and niece of Alida. The descendants of this couple were, and still are, numerous. Several of them have been prominent citizens of New York and other States, especially in the way of commercial enterprise.

The elder Livingston family, from the time of its founder, always wielded an important influence in the affairs of the colony of New York, and was for many years one of the powers in the State. During the canvass which ended in the first election of Mr. Madison to the Presidency, the active adherence of the Livingstons as a family was deemed by that statesman and his political friends essential in order to carry the State of New York for the democratic candidate. What a change has the intervening half-century wrought, not merely in the affairs of this house, but in those of all like establishments in this country! The Livingstons are now a multiplied host of for the most part energetic and successful individuals, and their aggregate wealth and influence exceeds the probable dreams of their ambitious ancestor. Yet the strength which comes of combination is gone from them. Our democracy divides every clan, minces every estate, individualizes

everybody, disintegrates everything. Each man is the head of his own family; no man can be the head of the family of his ancestors. With us, the question whether or not the eldest son shall be wealthy, powerful, a patron, depends upon the eldest son's personal qualities; and the question whether or not the younger son shall be a clergyman, usually turns upon his individual inclination. The law does not arrange these matters for them before they are born; and if a Plantagenet would appropriate any of the offices or honors of the republic, he must first vie with and overcome a rival bearing perhaps the newest of names. But in all this our institutions only tally with the general spirit of this age. The most hoary governments of the Old World are drifting visibly towards democracy. Even among crowned heads, at the present day, an upstart is apt to be influential, if not respectable.

In the United States, we seem to be outheroding this tendency of the times. Our political leaders, representatives, and even judges, are now too often individuals whom many an obscure, well-bred person would not meet in the same drawing-room for all the world. We are certainly making some progress in bridging the gulf which once generally separated low manners from high positions. Such progress is one of the worst of our present evils; it threatens us with the most palpable of our future dangers. How far the effrontery of ill-bred ignorance and incapacity will carry itself towards monopolizing places of dignity, power, and trust, is truly a question of moment. It is frightful to contemplate the possibility that the entire government in all its branches of so great and prosperous a country may, some day, be given permanently over to unlettered and unmannered statesmen. The

whole world always did and always will respect a man who becomes conspicuous by force of high capacity and virtue, in spite of humble birth and imperfect education; but surely it would be better if public opinion should restrain politicians from aspiring to the Presidency without a respectable knowledge of grammar and the proprieties of life.

CHAPTER II.

BIRTH AND MINORITY OF EDWARD LIVINGSTON.

Birth of Edward Livingston — The Period of his Minority — His Father's Family — Judge Robert R. Livingston — Margaret Beekman — The second Robert Livingston — Judge Livingston's Action before and during the Revolution — His Character — Character of Margaret Beekman.

EDWARD LIVINGSTON was born at Clermont, Columbia County, New York, on the 26th of May, 1764. His minority, therefore, embraced more than the whole course of the American Revolution. He witnessed in boyhood the cause, the struggle, and the result. He was born to citizenship in a perfectly loyal colony of the British crown; before he was a man, that colony had become an independent State, irretrievably committed to republican institutions. The incidents of this swift and permanent change in the affairs of his country were before his eyes during every hour of his youth, and all his family were devoted to the labors, sacrifices, and dangers belonging to such a transition.

It was an extraordinary family. Besides one child that died in its infancy, there were six daughters and four sons, all of whom were destined to reach a green old age, ranging from sixty-six to ninety-eight years. Edward was the youngest of all, — the Benjamin of the household. The other nine were, first, Janet, born in 1743, and married to the celebrated Richard Montgomery, who fell at Quebec in 1775; second,

Robert R., the first Chancellor of the State of New York, born in 1746; third, Margaret, Mrs. Thomas Tillotson of Rhinebeck, born in 1748, whose husband was one of the early Secretaries of State of New York; fourth, Henry B., a colonel in the Revolutionary army, born in 1750; fifth, Catharine, born in 1752, and married to the Reverend Freeborn Garretson of Maryland, one of the pioneers of the Methodist church in this country, whose memory, for sanctity and zeal, is held in high veneration by that denomination of Christians; sixth, John R., born in 1755; seventh, Gertrude, born in 1757, wife of the general, politician, governor, and judge, Morgan Lewis; eighth, Joanna, born in 1759, and married to Peter R. Livingston, an eminent politician of the State of New York; and last, Alida, born in 1761, and married to another Revolutionary officer, General John Armstrong, who, after the war, held important civil positions, including those of Secretary of State for Pennsylvania, Minister of the United States to France during the latter part of Jefferson's administration, and Secretary of War under Madison.

The father of these ten children was Robert R. Livingston, one of the judges of the Supreme Court in the colony of New York; their mother was Margaret, daughter of Colonel Henry Beekman, and granddaughter, on her mother's side, of Robert, nephew of the first proprietor of the Livingston Manor, and Margaretta Schuyler. The marriage of this couple, in 1742, had been one of mutual love. Both of them were only children of their respective parents, both were to inherit large landed estates, and both had been bred to the highest refinement and best culture possible on this side of the Atlantic, in their time. There

was such adaptation in their characters and tastes that the ardor and even demonstrativeness of their affection for each other grew with their married life. The following is one of his letters to her written in July, 1755, thirteen years after their marriage, and when she had borne him seven children: —

"My last letter was written in a melancholy mood. To you I am not used to disguise my thoughts. Indeed, I have for a long time been generally sad, except when your presence and idea enliven my spirits. Think, then, with how much pleasure I received your favours of the 30th of June and 3d instant. This I did not do till last Sunday, and I have been happy ever since.

"You are the cordial drop with which Heaven has graciously thought fit to sweeten my cup. This makes me taste of happiness in the midst of disappointments. My imagination paints you with all your loveliness, — with all the charms my soul has for so many years doated on, — with all the sweet endearments past and those which I flatter myself I shall still experience. I may truly say, I have not a pleasant thought (abstracted from those of an hereafter) with which your idea is not connected; and even those of future happiness give me a prospect of a closer union with you.

"I have not agreed with the Benthuysens yet; and, what is unaccountable, they say that my offers are not fair. I fear that I must go to law with them at last, but I shall try once more to get their final answer.

"I expect to-morrow the pleasure of the last letter from you while I am absent. Let the next after your receipt of this be to my father, for I hope to be on my voyage to you next Saturday. To-morrow, I in-

tend to go and see your father, to consult with him. Your letters give me some hope of Bedloe's, which would be a very agreeable thing indeed. We must depend on Providence and hope for the best.

"May the God of heaven preserve you, and grant us a happy meeting, for without you I am nothing.

"Yours most affectionately,

"ROBERT R. LIVINGSTON.

"Remember me to all the little ones Providence has committed to our charge, and kiss them for me. Wednesday the 9th. Began to write on Tuesday, intending to send by a sloop, but it goes now by the mail."

The refined reader of the above letter will not have overlooked the natural touch of filial tenderness which gleams from one of its sentences. The object of the sentiment there so delicately but clearly indicated was a notable man. The father of Judge Livingston was Robert, second son of the first proprietor of the Manor of Livingston, and the same who had earned and received the Manor of Clermont, as was stated in the first chapter. We have a general likeness of him as he appeared at the age of eighty-five, sketched by the pen of his grandson Edward.* "Never," says this description, "was man better entitled by his manners, his morals, and his education, to the appellation of gentleman. His figure was tall, somewhat bent, but not emaciated, by age, which had marked but not disfigured a face once

* Edward Livingston, in mature life, conceived a plan of writing a novel in which the characters should be drawn faithfully from his own memories of the actual group of which his grandfather was the central figure. He appears to have written but one chapter. In that the description quoted in the text occurs. The fragment is headed with the couplet:

"Scenes in sad remembrance set;
Scenes never, never to return."

remarkable for its regular beauty of feature, and still beaming with the benevolence and intelligence that had always illuminated it. He marked the epoch at which he retired from the world by preserving its costume: the flowing, well-powdered wig, the bright brown coat, with large cuffs and square skirts, the cut-velvet waistcoat, with ample flaps, and the breeches scarcely covering the knee, the silk stockings rolled over them, with embroidered clocks, and the shining, square-toed shoes, fastened near the ankle with small, embossed gold buckles. These were retained in his service, not to affect a singularity, but because he thought it ridiculous, at his time of life, to follow the quick succession of fashion." He had, in his youth, been sent out to Scotland to be educated, and had remained there till the age of twenty-five. His attainments are said to have been extraordinary for his time. What remains of the correspondence between himself and his son indicates, on the part of both, a familiar though unpretending acquaintance with ancient classical literature. He was a life-long student, and it is related of him that at an advanced age he made the acquisition of a new language.* His

* He always kept a book in which he copied, with his own hand, apparently all his letters, even those addressed to the members of his family and to his grandchildren. The latest two of these books, bound in parchment, and containing copies of the letters he wrote during his old age, are now lying beside me. These letters are principally in English, some in German, a few to his granddaughters in French, and one or two, addressed to his grandson Robert while at college, in Latin: The following beginning of a letter, which I transcribe from one of these antique manuscript folios, written to the young Robert after the latter had commenced the practice of law at New York, exhibits the old gentleman in the light of traits the most whole-souled and amiable. In the same letter, which is a long one, the octogenarian discusses several matters of private business connected with the surveying of lands and the collection of rents, alludes to political affairs in Europe and America, makes a long quotation in the original from Erasmus, adds some religious reflections of his own, and reminds his grandson to bring with him, upon his next visit, a plentiful supply of gunpowder and fish-hooks.

"*Claremont*, the 29th March 1769
"D^R GRANDSON ROB^T
"I rec^d y^rs of the 6th March;

nature was deeply imbued with religion, — a characteristic in which he enjoyed the complete sympathy of his only son. Several years before his death he made over his entire property to the latter, in whose large family he passed the remnant of his life in patriarchal dignity and happiness. But his greatest distinction was his early looking and longing for the independence of his country, — a subject on which his views and sentiments appear to have outrun those of all his contemporaries, even of the leading spirits in the approaching Revolution. They relate of him, that, one day in the latter part of the year 1773, his son, his grandson Robert, — the destined Chancellor, — and Richard Montgomery were conversing with him in his room at Clermont, when he exclaimed, "It is intolerable that a continent like America should be governed by a little island, three thousand miles away. America must and will be independent. My son, you will not live to see it; Montgomery, you may; Robert," addressing his grandson, "you will." The prediction proved oracular; for Judge Livingston and General Montgomery were both to die on the eve of American Independence, while to the young Robert it was allotted, at the age of twenty-nine, to serve with Jefferson, Franklin, Sherman, and Adams, as the committee selected by Congress to prepare the immortal Declaration. The old man's patriotic ardor had kept pace with his foresight, and both had unquestionably moulded in a great degree the sentiments and views of

but your good father opened it by mistake: consequently he knew you had apply'd to me, in pursuance of my orders, for a little money in case you should be straiten'd, w^{ch} I take in good part. Yr daddy was a little out of humour, alledging you was a little too lavish; but I told him you could not receive cash for law, till bills were taxt, and then not to be too hasty, w^{ch} would look necessitous and griping, wherein he acquiesc'd. I should immediately have enclosed you a 10^{lb} bill, but he told me you would receive about £50 or £60 of his money, whereout you could deduct that amount; so I gave him the £10."

the large circle of which he was the centre. He died in 1775, after hearing of the events at Lexington; and among his last words — addressed to his daughter-in-law — were, "Peggy, what news from Boston?"

Judge Livingston, the father of Edward, was a man worthy to transmit to his children the strong traits of his ancestors. Religious feeling was the ruling quality of his character. With this were blended a mild temper, an affectionate disposition, inflexible principles, practical energy, and worldly wisdom. I have before me a considerable number of his family letters, besides that which has been already transcribed; and they not only all together show that he possessed this combination of qualities, but almost every separate letter exhibits them all. His judicial duties, political labors, and private affairs gave him plenty of employment. But in the midst of the most multifarious engagements he wrote constantly to his father upon all subjects, and especially to communicate any news respecting the colonial policy of the mother-country, — a theme which greatly occupied the thoughts of both for many years before the Revolution broke out. He was chairman of the committee which was appointed by the General Assembly of New York with authority to correspond with other Assemblies and their committees in relation to the several grievances and apprehensions of the American colonies.* As such, he with his colleagues was admitted, in the absence of delegates regularly appointed by New York, to a seat in the Stamp Act Congress of 1765, and took

* This appointment of a committee of correspondence by the Assembly of New York took place on the 18th of October, 1764, and was, by more than six years, the first step of the kind taken in America, though a dispute for the honor of that priority existed for a time between those who claimed it respectively on behalf of Massachusetts and of Virginia.

an active part in its deliberations. And he was the author of the address to the King adopted by that body, praying for "the invaluable rights of taxing ourselves and trials by our peers." Then, as at other times, he would write to his father, giving details of what he was doing and thinking, dwelling upon the madness of England, criticising the slowness of the mode of transacting business in Congress, chronicling whatever he observed of variation in the popular feeling, and pleading the multiplicity of engagements as his excuse for not writing more. One of these letters, a long one, dated the 19th of October, 1765, closes as follows: "See the three great points we have to contend for, and of what importance they are: trials by juries, a right to tax ourselves, the reducing admiralty courts within their proper limits. If you, Sir, consider my situation, you will excuse my not writing to you before. Yesterday I had the whole Congress to dine with me. In one place or another we dine together every day; so that, besides business, this engrosses much time. I am, now obliged to drive my pen over this as fast as I can." Under date of September, 1767, he writes, "I have nothing very agreeable. Madness seems to prevail on the other side; melancholy and dejection on this. . . . . This country appears to have seen its best days; but God may still avert the impending mischief and restore all things. Our Governor seems rather too much taken up with trifles. The grand object with him is the building of a playhouse, though nothing he could think of will give greater offence to the people. But he will have it guarded by the army."

Judge Livingston's moderation kept him rather behind both his aged father and his youthful son in their views of Independence. In the Stamp Act Congress

he had favored the measure of an explicit acknowledgment of the right of Great Britain to regulate the trade of the colonies, and had deprecated in one of his letters the heat of those members who had opposed that measure. On the 5th of May, 1775, he wrote to Robert as follows: —

"DEAR SON: You, I suppose, are now on your way to Philadelphia, and will soon make one of that important body which will engage the attention of all America and a great part of Europe. May Heaven direct your counsels to the good of the whole empire. Keep yourself cool on this important occasion. From heat and passion, prudent counsels can seldom proceed. It is yours to plan and deliberate, and whatever the Congress directs, I hope will be executed with firmness, unanimity, and spirit. Every good man wishes that America may remain free. In this, I join heartily; at the same time, I do not desire that we should be wholly independent of the mother-country. How to reconcile these jarring principles, I profess, I am altogether at a loss. The benefit we receive of protection seems to require that we should contribute to the support of the navy, if not to the armies of Britain. I would have you consider whether it would not be proper to lay hold of Lord North's overture, to open a negotiation and procure a suspension of hostilities. In the mean time, the check General Gage has received, and our non-importation, will perhaps have a good effect in our favor on the other side of the water. This seems to be the thought of our council here, as Mr. Jay and Mr. Livingston will inform you. I should think, if you offered Britain all the duties usually paid here by our merchants, even those paid since the disturbances began, those on tea excepted, which seem to be too odious,

and all other duties they may think convenient to levy for the regulation of trade, shall be lodged in the treasury of each colony, to be disposed of by their respective assemblies and legislatures, on an engagement on their side that no other taxes shall be imposed on them but by their own representatives, we ought to be contented. Some specious offer should be made, to increase our friends in England. This, or some other of that kind, if Lord North meant anything by his motion, but to deceive the people of England, ought to put a stop to his proceedings for the present; otherwise the odium he lies under must increase. The Boston Charter ought by all means to be restored, and were the tea paid for, as a *douceur*, by the whole continent, it would be no matter. But this you will not insist on except you are well supported. These are my present thoughts; however, judge for yourself, and unite by all means, for on this all depends. As to what relates to war, after agreeing on *quotas*, the manner of levying men and money will, I suppose, be left to each colony. May God direct you in all things. A dependence on him will inspire both wisdom and courage; and if his Providence interfere in anything, as I firmly believe it does in all things, it certainly does in the rise and fall of nations.

"Your most affectionate father,

"R. R. LIVINGSTON.

"Inquire whether I can have a quantity of saltpetre. I hear there is a large quantity imported at Philadelphia."

The saltpetre in this postscript sought after was for use in a powder-mill, which the writer was then erecting, and in which his son, John R., manufactured gunpowder during the Revolutionary War. The following

letter to Robert, dated June 19, 1775, shows the progress of Judge Livingston's views, and of his powder-mill: —

"I conclude, from the King's answer to the Lord Mayor, that if American liberty is maintained, it must be by the greatest exertion of our force, under the favor and direction of Providence. In this situation I am under no apprehension but from the enemies we have amongst ourselves. A hearty and united opposition would render us to all appearance invincible. In this part of the country we have many opposers, but still the Whig interest appears to be growing. Committees either have been or will be chosen in every part of Dutchess; but I believe there will be many who will not sign the association, and great opposition is made to the choosing of a committee in Rhinebeck. Cousin Robert found the manor people under arms last Tuesday. About two thirds signed the association; the rest are to consider it a fortnight, but many oppose warmly. The Whigs are predominant, at least in Tryon, and if I can depend upon the information I have received, have sent deputies to the P. Congress. I hear the adjourning of your Congress to Hartford or Albany has been mentioned. As the object of most consequence is union, the greater attention should be paid to the three counties, Albany, Charlotte, and Tryon. It seems to be absolutely necessary that they should be in a state of defence. In this purpose, nothing could be more effectual than the Congress sitting in Albany. This would oblige all the Tories, as they are called, to join, to say nothing of its being one hundred and fifty miles nearer the seat of action. My powder-mill will be set agoing, I hope, the beginning of next week.

"Mr. F——'s* conduct appears unaccountable to me. Does he or does he not approve of vigorous measures? I still expect much good from his counsels. I see, by the genuine speech of Lord North, that he disdains treating. . . . . I am convinced they don't know America yet. I don't wonder at it; we are hardly yet ourselves apprised of the power we are able to exert, and that makes many afraid to join in the cause."

The association here spoken of was one, the requisition for which expressly excepted crown officers. "But he scorned to avail himself of that exception," his son, the Chancellor, afterwards declared, "and went voluntarily and signed, being the first and, I believe, the only person holding a lucrative office in the government who associated."

Judge Livingston's judicial independence, and courageous devotion to the cause of liberty, were put to still sharper tests. He broke up a practice which he found existing in the court, of granting general warrants to custom-house officers to search for contraband goods,—a practice which the provincial government is said to have had much at heart, and which had been sanctioned by the courts in several of the colonies. And in 1765, when Lieutenant-Governor Colden ordered the judges to send up their proceedings in a cause, — that of Force *versus* Cunningham, — after a trial and verdict, in order to their being reviewed by the Governor and Council, he perceived at once the abyss to which the judicial power would be consigned by a compliance with the order; and he, with his brethren, flatly refused to comply, assigning their reasons, which they published, as a warning to the people of their danger. They were afterwards served with a peremptory order of the King, commanding them

* Franklin's?

to send up the proceedings; but they absolutely declined, of course at the hazard of losing their commissions. This subject is mentioned in one of the Judge's letters to his father. "The King and Council," he wrote, "have determined the matter of appeal against us, contrary to the highest assurances that we had from all hands, that we should be successful in opposing it. We have, in consequence, been served with the order of the King and Council, and another writ to send up the proceedings; but we remain firm to our principles and will not obey. We have reason to think that the order has been surreptitiously obtained. It does not appear that our agent knew that the affair was pending in council, for at the very time he was assured by the Secretary of the Board of Trade that the instructions to Sir Harry More would be so altered as to put an end to that controversy."

From these samples of his correspondence it is plain enough that the father of Edward Livingston was one of those strong men who, in the conduct of life, have a double reliance,—upon Providence, and upon themselves. These extracts reveal, too, something of his humility, his affectionateness, his gentleness, and his serenity. With regard to his possession of these milder qualities there is much external evidence. His wife, after many years of widowhood, made a record of her testimony concerning him, in which, after dwelling upon his public acts and character, she attributes to him "an unequalled sweetness of disposition," and "a piety that guided every action of his life." One of his most intimate friends, William Smith, the historian, was accustomed to say, "If I were to be placed on a desert island, with but one book and one friend, that book should be the Bible, and that friend Robert R. Livingston."

Margaret Beekman — for her maiden name continues to this day to be, in family history, her distinctive appellation — was a woman of a large and heroic mould. I presume that no woman not worthy to be thus characterized ever reared such a family as hers. Of a plain and vigorous understanding, a genial heart, a cheerful temper, and a religious spirit unclouded by austerity, and well imbued with the political principles of her husband and father-in-law, she divided the most energetic devotion between her country, her family, and her affairs. Facts hereafter to be narrated will present her in a fuller and clearer light than any descriptive words. Surviving her husband almost a quarter of a century, bearing a brave part in the perils and sufferings of the time, and living to see the fulness of her eldest son's fame, as well as the first-fruits of the greatness of her youngest, she is, for a considerable period, a part of our subject.

CHAPTER III.

EDUCATION AND EARLY ASSOCIATIONS.

Departure of General Montgomery for Canada — School at Esopus — First Constitution of New York — Robert R. Livingston — Burning of Esopus by the British — Destruction of the Family Mansion at Clermont — Princeton College — Dr. Witherspoon — Study of Law — Cultivation of Philosophy and Poetry — Lafayette — The Family at Clermont.

EDWARD LIVINGSTON enjoyed, in one respect, a favorable opportunity for becoming a spoiled child. All the idolatry which his family had for any member was yielded to him from the first, as it was retained by him to the last. Yet the species of tyranny which that kind of worship engenders in common natures did not find any lodgment in his. His brothers and sisters have all borne testimony to that perennial sweetness of temper in the child and youth, which, in the man, was something more than philosophic, something more than simply Christian. Once, and but once, they said, when he was about eight years old, he was charged with violent conduct. The accusation was brought by one of the sisters to the mother. "Then go in the corner," said Margaret Beekman. "I am sure you have been very naughty, or Edward would not have done so."

The home at Clermont was rural and secluded, — a plain large mansion overlooking the Hudson from the forests and farming lands of the lower manor, with rooms for many guests, as well as for the large number of regular inmates.

Judge Livingston had also a town-house in New York,

where the family resided in winter. The journey between the two establishments was usually performed on board a sloop, and was an affair of days instead of hours.

The greater part of what is now the State of New York was then a wilderness, the settlements being mainly confined to the neighborhood of the Hudson and Mohawk rivers.

Slavery was one of the institutions of the whole land, and a large number of negro slaves formed a necessary part of every household like that of Judge Livingston.

Edward was kept at home till after his father's death, which happened in December, 1775, when he was in his twelfth year. Like all his brothers and sisters, he was of a sound and healthy constitution, and possessed from the first his full share of that marked vitality which seemed to destine them all for long life. What training and influences shaped the growth of his mind during this tender period will be apparent enough from a glance at the characters of the persons and at the circumstances already mentioned, especially when it is added that even his sisters were all politicians as ardent as intelligent. When he was but a year old, his brother Robert had, on the occasion of being graduated at King's* College, delivered a stirring oration in praise of Liberty,† in which he had given significant expression to the even then settled every-day sentiment of the entire family and its circle. And when the Revolution broke out, Robert was among its delibera-

* Now Columbia.

† "In particular, Mr. Livingston, whose oration in praise of Liberty was received with general and extraordinary approbation, and did great honor to his judgment and abilities in the choice of his subject, the justice and sublimity of his sentiments, the elegance of his style, and the graceful propriety of his pronunciation and gesture; and many of the audience pleased themselves with the hopes that the young orator may prove an able and zealous asserter and defender of the rights and liberties of his country, as well as an ornament to it."—*New York Gazette* of May 30, 1765.

tive leaders, while Harry was an officer in the field. In these surroundings there was everything to produce an early awakening of the faculties, the sentiments, and the imagination of the boy.

His first teacher was a clergyman of the Dutch Reformed church and of Dutch ancestry, known as Dominie Doll. This gentleman was a widower, and had then an only child, a young lady of a frank and sprightly nature. With the daughter,* he lived for a time on the most friendly footing in the family of Judge Livingston, as tutor of the younger children.

Edward was nine years of age when his eldest sister, Janet, was married to Richard Montgomery. This couple had once met, some years before, when he — then a Captain in the British army — was on his way to a distant western post. The meeting had left its impression upon both; and after considerable distinguished service, he had returned to England, disposed of his commission, and emigrated to New York. The marriage soon followed; and visions of long years of tranquil happiness upon a farm at Rhinebeck were entertained by the pair. But their projected house was unfinished when, attracted by his military reputation, the authorities of the United Colonies called upon him to serve as one of eight brigadier-generals in their new army. He accepted reluctantly and sadly, declaring that "the will of an oppressed people, compelled to choose between liberty and slavery, must be obeyed." He met with no opposition from his wife. She accompanied him on the

* Robert, the oldest son, on leaving home one day for Albany, inquired of Miss Doll, in his characteristically gallant manner, "Well, what shall I bring home for you?" "A good husband!" was the lively response. "Agreed," replied the future Chancellor; and it happened that he actually brought back as a guest a gentleman who in due time married the Dominie's daughter, and with whom she led a happy life at Kinderhook.

way to his final campaign as far as Saratoga, where she received from his lips the last comforting assurance, "You shall never have cause to blush for your Montgomery."

The parting of Janet Montgomery and her "soldier," as she always afterwards called him, and the preparations for the parting, were so melancholy as to leave a lasting impression upon the friends of both. Edward, in his old age, thus described a scene connected with those preparations, which had held a permanent place in his memory. "It was just before General Montgomery left for Canada. We were only three in her room: he, my sister, and myself. He was sitting in a musing attitude, between his wife, who, sad and silent, seemed to be reading the future, and myself, whose childish admiration was divided between the glittering uniform and the martial bearing of him who wore it, when, all of a sudden, the silence was broken by Montgomery's deep voice, repeating the following line, as one who speaks in a dream, —

'"'Tis a mad world, my masters,"

I once thought so, now I know it.' The tone, the words, the circumstances, all overawed me, and I noiselessly retired. I have since reflected upon the bearing of this quotation, forcing itself as it were upon the young soldier at that moment. Perhaps he might have been contrasting the quiet and sweets of the life he held in his grasp, with the tumults and perils of the camp which he had resolved to seek without a glance at what he was leaving behind. These were the last words I heard from his lips, and I never saw him more."

The elder brother, Harry Livingston, accompanied Montgomery to Canada, whence he was destined to re-

turn in safety, though his youthful impetuosity was such that the General suffered many fears on his account, and sometimes heartily wished him home.

Having thus lost, within a few months of each other, his father, his grandfather, and his celebrated brother-in-law, Edward was shortly placed at school in Albany, but very soon was transferred to Esopus, — now Kingston, — in the county of Ulster, on the west bank of the Hudson, eighteen miles from home, under the tutelar charge of his old friend, Dominie Doll, who had established a school at that place. Here he at once had to learn several lessons besides those set down in the good teacher's *curriculum*. In the first place, he was obliged to forego the comparative luxury of the family-table, — a discipline from which he dated the facility with which, in after-life, he accommodated himself, whenever it was necessary, to the rudest fare. His friends were many times amused by his description of his first dinner at the Esopus farm-house where he had been placed to board. Potatoes and a piece of pork composed the whole bill of fare. The knife was put in the solitary dish, and the schoolboy invited to have his share. "I don't like pork; we never eat it at home," was the response. "Very well, my little man," replied the host, "nobody obliges you to eat it." A potato, sadly accepted, furnished the scanty repast. The second day brought no variety. There, again, was the distasteful pork, against which the protest was somewhat weakened by a ravenous appetite. The third day fastidiousness succumbed to hunger; and a course of pork and potatoes, varied by nothing more refined, was entered upon, and endured through the school term.

No boy, I suppose, ever gets through his school-life without taking part, offensively or defensively, in a greater

or lesser number of those conflicts which are miniatures of the controversies of men. The first, if not the only one of these battles in which Edward engaged was fought soon after his appearance at Esopus. The occasion was the moral necessity of backing up a statement which he casually made among his fellows, to the effect that at Clermont they had an ice-house in which ice was preserved for family use through the summer, — a statement which one of the boys, because he had never heard of such a thing before, honestly but indiscreetly pronounced to be — a lie.

Every Saturday he walked the eighteen miles to Clermont, and returned in the same manner every Monday. Of these weekly journeys he retained vivid and pleasing recollections to the end of his life, attributing to them the habit and love of walking which he ever after retained, and to which he, in a great measure, owed, as he believed, the health he preserved through that long course of intense and continuous mental labors which we are here beginning to trace. In these facts we can read a volume upon the character of the good and strong Margaret Beekman, who evidently had determined that her youngest and favorite child should not suffer too much from the want of a father's masculine guidance. No wonder that she could afterwards point proudly to that child in playful but triumphant refutation of the doctrine that women are not competent to educate sons.

Esopus then had a population of about thirty-five hundred, and ranked as the third town in the colony. There the first "Convention of the Representatives of the State of New York" — having been elected to meet in the city of New York on the 8th of July, 1776, and having, in order to avoid the neighborhood

of Lord Howe and his forces, held adjourned sessions at White Plains, Haarlem, Philipse's Manor, and Fishkill — sought refuge for its deliberations in February, 1777. And there, on the 20th of April, the first constitution of the State was adopted in the convention.

Robert R. Livingston, seventeen years older than his brother Edward, but still under thirty, was a conspicuous member of this body. That, together with his employment by Congress as one of a secret "Committee for facilitating the Military Operations on Hudson's River," — in which capacity he was a constant, free-spoken, and welcome adviser of Washington, — prevented his signature to the Declaration of Independence, though he had labored with Jefferson's committee in revising the draught of that instrument. He performed a similar work in the New York convention; and the new constitution, though adopted after deliberate and patient discussion, was at last hurriedly printed and proclaimed. The printing was done at the ancient village of Fishkill; the proclamation was made in front of the Esopus court-house, the secretary of the convention standing upon a barrel, surrounded by the people while he read the paper. Such scenes, with all their concomitant excitements and lessons, divided with his books and school the daily attention of the young Edward.

Thus Esopus became the first and temporary capital of the struggling, infant State. The first governor and legislature chosen under the constitution met there in September. Their accommodations were not luxurious, nor were their duties of an easy sort. There was no greedy and corrupt lobby to beset their official virtue; but they were encompassed by rough and primitive dangers, and pursued their deliberations

"on the perilous edge
Of battel."

Burgoyne was at the north, and Sir Henry Clinton at the south, planning a conjunction, and a military possession of the whole line of the Hudson, with a view of cutting off communication between New England and the rest of the country. In the attempted execution of this scheme, Clinton, in conjunction with Admiral Howe and Commodore Hotham, despatched Sir James Wallace up the river with a flying squadron conveying about four thousand men, commanded by General Vaughan. Beyond the capture of forts Montgomery and Clinton, — the former commanded by the new Governor in person, the latter by his brother, — and the destruction of the *chevaux-de-frise*, boom, and chain which had been stretched across the river at that point, the result was nothing but a good deal of safe and cautious marauding. Boats, vessels, and mills were destroyed; villages burned, houses fired upon, and neighborhoods incapable of resistance pillaged. The Governor and legislature were dislodged from Esopus with the people of that village, and the enemy thereupon plied the torch with such industry that only a few houses were left standing; but the Governor, legislature, and people took refuge at Hurley, — a small village four miles distant, where the excitement of the day of flight was varied by the hanging of a British spy, named Taylor, within view of the conflagration of Esopus.

The effect of this expedition was to rouse and exasperate the whole Whig population to the point of implacability. Vaughan returned to New York in safety. Burgoyne, not so fortunate, surrendered his sword to General Gates, in the presence of their two armies, at Saratoga, on the 17th of October, only one day later than the sack of Esopus.

The school of Dominie Doll was of course driven,

away with the Esopians, but, sharing the fortunes of the new government, continued its existence for a time at Hurley. Young Livingston had, in these events, occasion for an eccentric visit to Clermont. The house of his mother, in which he had been born, and in which his father and grandfather had lately expired, as well as that of his brother Robert, was among those marked for destruction by Vaughan's men on this expedition. At the very time, two British officers, a wounded captain, named Montgomery, and his surgeon, had been for some time hospitably entertained by Margaret Beekman at Clermont. They gratefully proposed to extend to the house the protection of their presence and influence. But the offer was politely yet firmly declined, on the ground that the widowed proprietor did not desire any such advantage over her neighbors and countrymen. The sturdy matron determined to evacuate Clermont, carrying off what needful articles she might. A part of her furniture was buried, the remainder loaded in wagons; and when warned that the enemy was approaching and not many miles distant, she set forth on a weary journey eastward, accompanied by all her family and retinue of servants. The timeliness of this departure was proved by a column of smoke which the party, after advancing a few miles, plainly saw rising from the flames of the mansion they had left. This scene was destined to recur to the memory of Edward, the youngest of the company, and to point an eloquent passage in a speech to be delivered by him twenty years later on the floor of the House of Representatives of the United States. If the reader would have further illustration of the robustness of Margaret Beekman's nature, let him picture to himself — what actually occurred — that high-bred dame, at the very moment of starting upon this

journey, enjoying a hearty laugh at the figure made by a favorite servant, a fat old negro woman, perched in solemn anxiety at the top of one of the wagon-loads.

The destination of the party was Salisbury, in Berkshire, just beyond the border of Massachusetts, where they secured refuge in a house which it is said is still standing, and where they remained but a short time, the hasty retreat of Vaughan's command rendering Clermont a safe residence again. Mrs. Livingston, with her family, then returned to her home, and at once began the work of repairing its desolation.

It was in the midst of all this tumult and danger that Edward Livingston snatched the learning which fitted him for college. He was entered a junior, at Nassau Hall, Princeton, in 1779. The business of the institution was in that year resumed, after several years' suspension, in the course of which a detachment of the army of Cornwallis had been quartered for a time in the college buildings, from which Washington had dislodged them on the morning after the Battle of Trenton.

The President, Dr. Witherspoon, was an extraordinary man. His acquirements were large, his observation keen, his humor rich, his understanding vigorous, and his spirit bold. He combined the qualities of a learned divine, an eloquent preacher, a prolific writer, and a progressive statesman. Born and educated in Scotland, the first forty-six years of his life were wholly spent in that country, chiefly in clerical, scholastic, and literary pursuits; and he came to America but eight years before the Declaration of Independence, with the sole view of taking the college under his charge. And such, probably, would have been the peaceful course of his subsequent career, but for the war which presently scattered the students to their homes or to the army. His occupation

being thus temporarily gone, he betook himself to politics, and, adapting himself completely to the situation of affairs, became a zealous and noted rebel and practical man of the time. His services, in and out of Congress, were of the most energetic and industrious sort. He soon became so prominent, that, as early as in July, 1776, he was one of three leaders — Putnam and Lee being the other two — selected for the honors of effigy-burning by the British soldiery under General Howe at Staten Island. He was a plain-spoken man; and when questioned, on his first appearance in Congress, in 1776, whether he thought the colonies were ripe for independence, he answered, "Ripe? Yes; rotting." He was by nature an athletic disciple; and if the body now distinguished by the designation of "muscular Christians" had been distinctively known in his time, he would undoubtedly have proved himself one of its most respectable exponents. He returned to Princeton in 1779, to repair the battered college buildings, renew the broken library and apparatus, regather the students, and put the institution again on its feet.

Young Livingston resided two years at Princeton, and was graduated in 1781, at the age of seventeen. He had but five fellow-graduates, only one of whom, William B. Giles, of Virginia, was destined to reach any uncommon distinction.

As to what his habits of study were up to this period I have not found any direct evidence, except his own statement, made long afterwards, that he had spent his time rather idly at school, and still more so at college, and that, as to the exact sciences, he passed them over with the carelessness natural to his age, learning only so much as was necessary to the obtaining of his degrees. But the reader, when he comes to examine, in another part

of this work, the series of letters from father to son in which that statement occurs, will find that it is given with reference to a standard of industry which most scholars would consider severe, and that it is coupled with a profession on the part of the writer of being then "but an indifferent scholar," — an evidently candid profession, but clearly referring to a criterion which would leave few good scholars in the world of active men. In the same connection he adds, that, on mixing a little with the world, he was fortunate enough to discover the defects of his education, and then began to remedy them, although he was much counteracted in his endeavors by his former habits of idleness and his new pursuits of pleasure. I infer, simply, that before leaving college he did not acquire those habits of intense application which he perfected afterwards and cherished to the end of his life.

What his friends thought of his mind and his tastes at this early period is well indicated by a single sentence in one of John Jay's letters to Chancellor Livingston, written at Paris in 1783, after an absence of four years from this side the Atlantic. "I send you," it runs, "a box of plaister copies of medals: if Mrs. Livingston will permit you to keep so many mistresses, reserve the ladies for yourself and give the philosophers and poets to Edward." * That the latter disposition was not inappropriate will be evident to those who trace Mr. Livingston's career, and who examine his principal, even his latest performances. The distinctive culture of philosophy and poetry by a youth in these circumstances shows plainly an uncontrollable bent of nature. The reader, as he proceeds, will constantly observe a like irresistible force leading the man, even in the midst of ex-

* *Life of John Jay*, pp. 174–181.

traordinary misfortunes, depressing cares, and real struggles, to reserve his best powers for philanthropic labors and studies.

On leaving college, Edward immediately began the study of law, at Albany, in the office of John Lansing, afterwards the second of the New York chancellors. For the next two years the distractions incident to the war continued; but this was not the sole nor the worst difficulty then in the path of the American law-student. The decisions of none of the cis-Atlantic courts had yet been reported, much less digested. There were yet no American treatises. The rules of law and practice were still to be shaped by the judges through the process of adapting principles and precedents from English jurisprudence to our new institutions and statutes. Under these disadvantages many great lawyers studied. James Kent, Alexander Hamilton, and Aaron Burr were among Livingston's intimate fellow-students. These, with others, were in the habit of meeting, at Albany, at least during one season, for animated discussions of legal topics and methods of study.

Livingston was soon strongly attracted to the civil law, and thoroughly explored the Code, Institutes, Pandects, and Novels of Justinian, in the original, with some of the best commentaries upon them. In order to do this he was obliged, at the same time, to perfect by himself his knowledge of the previously neglected Latin.

After the evacuation of New York by the British, in November, 1783, the winter residence of his family being in that city, he continued his studies there until January, 1785, when he was admitted to practice as an attorney.

It was during the four years that intervened between his leaving college and his admission to the bar that he

first learned the real art of study, — the division of the day, and the rigid devotion to each pursuit of the hours or minutes that belong to that pursuit. In his division his old acquaintances, the philosophers and the poets, were not forgotten; general literature and novels had their hours; and society, which he frequented freely, scarcely suspected him of being a student. A scrap of gilt-edged, Bath paper upon which at this period he wrote the following lines * has come to my possession, buried accidentally among draughts of more serious compositions, accumulated during half a century.

"On Edward's table, emblem of his head,
See cards and pamphlets, plays and law-books spread.
Here lies a plea, begun with special care,
Ending with 'Stanzas on Augusta's Hair.'
Gilt poets there with ancient classics mix;
The 'Attorney's Guide' lies close to 'Scapin's tricks;'
Lo! in the midst, a huge black lettered book
With dust begrimed, yclepèd Coke.
Memento-like the Gothic volume lies,
And still 'Remember you're a lawyer!' cries;
Alas! unheeded cries, its voice is drown'd
By frolic Pleasure's more attractive sound;
She bids her roses in his fancy blow,
And laughing cries, 'Remember you're a beau!'"

At the same period he paid a hyper-scrupulous attention to the mode in his dress, — a temporary taste which earned him a temporary title, that of Beau Ned, and the remembrance of which was to furnish him with a theme for occasional laughter to the end of his life.

* Mr. Livingston always retained what he early manifested, a decided poetical taste. But genius is not indicated by any of his poetical compositions which I have seen. The best of these is a graceful translation, in rhyme, of the *Basium Primum* of the celebrated later Latin poet, Johannes Secundus, which he produced, as I suppose, at about the period referred to in the text. This piece was afterwards given by himself or some member of his family to Mr. Gulian C. Verplanck, who, while editor of the *Analectic Magazine*, as the successor of Irving, published it, as the production of an anonymous American poet, in that periodical, in the number for December, 1814, pp. 517, 518.

Lafayette, soon after his first arrival in this country, contracted with the whole family of Margaret Beekman a particular intimacy, which lasted for life, sustained by a frequent correspondence during more than half a century. Many autograph letters of this illustrious man, addressed to Mrs. Montgomery as well as to Edward Livingston, are before me. They are written in English, and generally their diction is perfectly free, vigorous, and correct, though they are marked by the occasional employment of Gallic idioms. Some of them will be transcribed in the course of our volume. The following sentences are extracted from a long letter of the Marquis to Mrs. Montgomery, dated at Paris, February the 22d, 1786.

"I not to return to America, Madam! I do assure you this idea would render me most miserable. To sever me from this fond hope would be half death to me. If born in France, I have been educated in America. So many friends there; so many recollections at every step! This year I am not able to go. But the year after this, I hope I shall, as I want to place a visit before the time when I will bring my son over to spend three years on your happy side of the Atlantic. He has been made a citizen of the United States, and he must go and learn on what principles he can deserve the flattering gratification."

"Be so kind, Dear Madam, as to present my best and most affectionate respects to the ladies and the gentlemen of your beloved family. I feel as if I was one of them. Remember me often to them, and let my name be now and then pronounced in the family conversation. I heartily feel for John's misfortunes, which, added to an irreparable loss, must be too heavy indeed. I think a voyage with you will do him good, and I hope, as Madame de Lafayette takes the liberty to entreat you with

me, that your intended excursion to Europe mayn't be deferred." *

The chivalric young foreigner produced, at the first, an ineffaceable impression upon the mind and heart of Edward, who made the most of his opportunity for cultivating a friendship destined to be as enduring as it was pleasing and honorable. Boy as he was, he was several times permitted to leave school to become a guest of the Marquis at head-quarters. How he succeeded in fixing the interest and regard of Lafayette, may be inferred from the fact that when the latter, at the close of the war, was about sailing for France, he had set his heart upon taking the youth with him, and had exerted himself to overcome the objections and refusal which had been interposed by Mrs. Livingston, who, after reflection, had declared that she felt that her son had work to do at home. He could hardly give up the plan; and when his young friend had accompanied him some distance on the road to Boston, whence he was to embark, he impulsively proposed still to take him along, to assume himself all the dereliction, and to insure a pardon from the mother, to be sued for from France. This strong temptation — for Edward's inclination rendered it such — was with some difficulty resisted. It is impossible here not to speculate upon the total change in

* During Lafayette's triumphal visit to this country in 1824, in September, the steamboat James Kent was chartered by the citizens of New York to carry their illustrious guest upon an excursion to Albany, stopping wherever he might wish along the river. On the way up, the party spent a morning with General Morgan Lewis and Gertrude Livingston at their country-seat at Staatsburg, and passed the evening festively at Clermont, being entertained by the heir of Chancellor Livingston. After leaving Staatsburg, the Marquis inquired of Colonel Fish, "Where is my friend Colonel Harry Livingston?" Soon afterwards, while the steamer was at the Kingston dock, Colonel Livingston, having crossed the river in a small boat from Rhinebeck, came on board. As soon as their eyes met, the two friends, — the Marquis and the Colonel, — now old men, rushed into each other's arms, embraced and kissed each other, to the astonishment of the Americans present. The Colonel had served under Lafayette in Rhode Island and at Valley Forge.

fortune and fate which might have awaited the American boy, involved in the orbit of the young French nobleman, destined first to guide a mighty revolution, and then to be absorbed by it. But, though the careers of the two friends were thenceforth to be as distinct as their hemispheres, the younger continued to be the other's "Dear Edward" for upwards of sixty years.

The characteristic vigor and spirit of the children of Margaret Beekman were as conspicuous in their amusements as in their enterprises. They relate of Mrs. Montgomery that once, in advanced life, after entertaining all day a guest of the heavy sort, she expressed relief at his departure in an audible sigh. One of her nieces said to her, "Why, aunt, you have not much patience with dull people." "Ah, no, my dear," she answered, "I have never been used to them." To the same purpose is the testimony of Edward recorded, after many years of turmoil and misfortune, in a letter to one of his life-long friends. "The account," says he, "you give me of Mrs. Du Ponceau has very much affected me. She is one of my earliest and best friends, and the remembrance of our early acquaintance connects itself with those scenes which, of all I have since gone through, have left the strongest and most pleasant impression on my mind. I allude to the time when our numerous family (of which she was always considered a daughter) were collected at Clermont. You were a witness to the harmony that united, to the gayety that inspired us under the auspices of that excellent mother who was never happy but when her children and her guests were so."

CHAPTER IV.

EARLY PROFESSIONAL CAREER.

New York in 1785 — The Bar — Federal Hall — The Mayor's Court — James Duane — The Case of Rutgers *versus* Waddington — Richard Varick — Egbert Benson — John Sloss Hobart — Brockholdst Livingston — Burr and Hamilton — Early Professional Career of Edward Livingston — His Marriage — Election to Congress.

THE city of New York retains hardly a trace of the features it wore in 1785. Its population and the area of its built-up portion are each forty times as great as they were in that year. Chambers Street was then a northern outskirt, beyond which the island was all as rural as the vicinity of Kingsbridge, except the village of Haarlem. Canal Street was a creek, Spruce Street a swamp, and the whole neighborhood of The Tombs, city prison, a fresh-water pond. Mayor Duane had a farm, through which ran a winding brook, where Gramercy Park is. The present Charlton Street passes the site of the house at Richmond Hill to which Aaron Burr carried his household gods every spring. Similar farms and country-seats abounded as far, or still farther south than these. Broadway was not paved or flagged above Vesey Street. The Park was a rough, unenclosed common. The Battery was the one fashionable place of promenade. The great fire of 1776 had left a large blot upon the face of the city, and most of the houses which remained standing bore plain traces of the worse than careless occupation of the enemy's soldiery. No daily stage-coach as yet plied on the road to Albany,

and travellers between the two cities usually braved the perils and delays of sloop navigation on the river. The newspaper was an infantile institution, and showed only dubious signs of inherent vitality. A leading sample, "The New York Packet," semi-weekly, — swelling with the Virgilian motto, "*Tros Tyriusque mihi nullo discrimine agetur*," — was a rusty little folio of four pages, and sixteen columns, five of which, including a poet's corner, were devoted to news and miscellany, parading a frightful literary poverty, and the other eleven given to curious advertisements, in which buyers and sellers, borrowers and lenders, dry and wet nurses, and those who required the services of either, commonly directed their correspondents to confer with the printer, Mr. Samuel Loudon, who was at the same time printer to the State. Wall Street and the metropolis had but one bank, — the Bank of New York; and of that institution a large proportion of the leading citizens were directors. The first of the annual city directories, not published till the following year, was a primer of eighty-two coarsely printed pages.

Such facts, considered in connection with the present magnitude and splendor of New York, furnish lively illustration of the prodigious vitality which, repressed and for a time smothered by the war, yet existed in the young metropolis, ready to blaze up the moment of the joint establishment of independence and peace. Immigration and building, all the branches of trade, and every description of business, started at once upon a growth which, to this day, has not ceased to appear magical.

There were special reasons why litigation should not and did not, even at the first, lag behind the other departments of industry. The long military possession of the enemy; the losses arising from the suspension of

rents, and damages done by loyalist tenants during a reckless occupation of houses; the destruction or removal of records, and consequent indistinctness of many titles; the processes for confiscation of property for toryism; the swift mutation in the relative value of money, property, and securities, and the sudden tightening of pecuniary obligations, the sense of which had been loosened for some years, — gave rise to abundant questions, which could only be settled in the courts.

The supply of first-rate abilities at the bar of New York was, at that time, commensurate with the demand. So small a community inevitably measured every candidate for professional standing, and the unlearned or mediocre aspirant stood at a fatal disadvantage among such competitors as Robert Troup, Egbert Benson, Brockholdst Livingston, Melancthon Smith, Aaron Burr, and Alexander Hamilton. The roll of the city bar numbered less than forty members. Among the additions made to the list during the few years following were Josiah Ogden Hoffmann and James Kent.

The courts were held in a building which stood at the corner of Wall and Nassau streets, where the United States long afterwards erected their custom-house. The old edifice had suffered a good deal of mutilation during the military occupation of the city by the British, and after the evacuation, having received alterations and repairs, became "Federal Hall." In it the oath of office was administered to the first President by Chancellor Livingston.

The Mayor's Court, though an inferior tribunal, became, under the administration of Mr. Duane, the favorite and really most important forum. Eight had been the limited number of those who were allowed to practice in this court; but in 1784 the restriction was re-

moved, in favor of all attorneys and counsellors of the Supreme Court. It was in consequence of this change of policy, coupled with the high juridical reputation of Duane, that the Mayor's Court suddenly acquired by common consent a business and an authority scarcely contemplated by the statutes creating it.

James Duane was connected with the Livingstons, having married the eldest daughter of Robert, third proprietor of the manor. He had practised law before the Revolution with great industry and success; had been an active member of the revolutionary Congress and of the first constitutional Convention of the State, and an earnest advocate of the Federal Constitution; and he attained such reputation and authority as a judge, that, after six years' service as Mayor, Washington pressed upon him an unexpected appointment to the bench of the District Court of the United States for New York, which he accepted, and retained with increased distinction, till age and ill health, in 1794, drove him into retirement.

It was in one of the earliest causes tried in the Mayor's Court, before Duane, in the year 1784, — the case of Rutgers *versus* Waddington, — that Alexander Hamilton, who had shown marvellous and precocious military and oratorical abilities, first demonstrated, at the age of twenty-seven, that he was a great lawyer. It was an action for damages for the use of premises in the city during the British occupation, brought by the widow of a Whig who had been driven from his property, against a British subject who had occupied it under permission from the enemy, — an action specially authorized by an act of the New York legislature, passed March 17, 1783, which declared that occupation under any military order should be no defence in such a case. The

defendant, nevertheless, pleaded the military possession of the city by the British, and authority to himself to use the premises for a part of the time from the commissary-general, and from the Commander-in-Chief directly for the remainder, together with the treaty of peace, which in terms relinquished and released all claims which the citizens of either nation might have against those of the other on account of damage done to the public or individuals during the war. The plaintiff demurred to this plea, and upon the issue of law so presented the cause was argued. The counsel for the plaintiff were Messrs. Lawrence and Wilcox, Robert Troup, and the Attorney-General of New York, Egbert Benson. For the defendant, William S. Livingston, Morgan Lewis, and Mr. Hamilton appeared. The brunt of the argument was sustained by Benson on the one side, and on the other by Hamilton. The rights of the States, and the relations of their sovereignty and that of the Federal Government, were discussed in such a masterly and exhaustive way as to settle what thence became elementary doctrines upon those subjects. The decision of the Court was, that the license of the British commissary-general was legally insufficient to protect the defendant from the plaintiff's claim for damages under the statute; but that the military possession by the enemy and the authority from the Commander-in-Chief constituted a perfect defence to the other portion of the demand, notwithstanding the statute, which, the Mayor held, could not have been intended to go to such a length as a repudiation of the treaty between the General Government and Great Britain, and which, if that were its meaning, would be so far void, because contravening the Law of Nations, which the constitution had made the law of the State. The legislature and a

portion of the people felt a good deal of dissatisfaction with this judgment, — a dissatisfaction which the former expressed in resolutions, and which the latter discussed in a public meeting, in whose proceedings an active part was taken by Melancthon Smith, a prominent lawyer and politician.

Richard Varick was recorder of the city, and by virtue of that office, the Mayor's judicial colleague. He had just commenced the practice of law in the city when Independence was declared, whereupon he joined the army, in which he served with credit, reaching the rank of Lieutenant-Colonel during the war, and getting the judicial appointment at its close. He was a stately gentleman, of high character, austere views, and mediocre talents. He succeeded Duane in the mayoralty, and so presided in the court for many years. Two or three lawyers yet living speak of his judicial traits from personal recollection. Their main reminiscences are that he gave pleasing bar dinners, and that he was given to reversing the humane maxim of the common law, and presuming a person accused to be guilty until his innocence was pretty clearly established. Public whipping, as a punishment for certain misdemeanors, was in his time authorized by the laws of New York. He was, I believe, the latest judge who pronounced this penalty here. Some of his sentences of this kind — and one in particular, towards the end of his term — excited some popular indignation. He was finally, in 1801, removed from the mayoralty on political grounds. In the newspapers of the time it is chronicled, that, after his dismissal from office, a culprit against whom he had pronounced a sentence alleged to be as illegal as it was severe, brought a civil action against him for the wrong, — an action which he was fain to compromise,

without a trial, by the payment of five hundred dollars as damages.

Egbert Benson was a very superior lawyer, not only in point of technical learning, but also with regard to the principles and philosophy upon which the law rests. In those principles and that philosophy he was, in the opinion of Chancellor Kent, more profoundly versed than any of his compeers, except Hamilton. It was in his office that Kent studied law. He had started in practice at Red Hook, a little before the Declaration of Independence, after which he devoted himself to the Revolutionary cause. He was prominent in the work of framing the new constitution and government of the State of New York, and became the first Attorney-General of the State. He was a man of great industry and method, and acquired much curious miscellaneous learning. He wrote an erudite memoir upon the names of places, which has been published by the New York Historical Society. He was fond of literary labor, but in his style cultivated a sententiousness and brevity which often lapsed into or bordered upon eccentricity and obscurity. A mild sample of this peculiarity is familiar to the eyes of the New York bar, in the inscription of a marble slab which he erected to the memory of his friend, Judge Hobart, in the room of the city-hall first occupied by the Supreme Court.

John Sloss Hobart appears to have shown no distinguishing talent and no notable trait, but still to have possessed such an assemblage of qualities as gave him a leading and secure influence among his contemporaries. Without any regular legal education he went, in 1777, upon the bench of the first Supreme Court of New York, from which he was, by the constitution, obliged to retire at the age of sixty years. Nevertheless, he was

afterwards appointed judge of the District Court of the United States for the District of New York, by President Adams, to whose party his attachment was firm, if not bigoted. His judicial career was respectable. He had been a prominent actor in the Kingston Convention, and represented New York in the Federal Senate from February to April, 1798; after which short senatorial career his acceptance of the judgeship of the District Court withdrew him from that body. On the whole, he appears to have been one of those either lucky or adroit steersmen who, in the voyage of life, are quite sure to leave many an abler fellow-sailor behind.

Brockholdst Livingston — a kinsman of our subject — has been mentioned in his place in the first chapter. He was an accomplished scholar, a brilliant advocate, and a successful judge. Those who would like to see a sample of his general learning and his wit will find an extraordinary opinion which he delivered from the bench of the Supreme Court of New York, in the adjudged case of Pierson *versus* Post, by referring to 3 Caines's Reports, 175. The question before the court related to the rights of a hunter in the game he had started, and after long chase nearly captured, as against an interloper who, chancing to come by at the eleventh hour, killed and appropriated the animal. The decision of the court, resting upon strict law, was adverse to the meritorious Nimrod's claim for redress. Judge Livingston took the occasion to express his dissent from the conclusions of his brethren, where his dissent could do no harm, in an opinion of considerable length, in which the gravity of the ermine laboriously treads the verge of refined drollery. It is such an opinion as Charles Lamb might have prepared for hypothetical delivery upon the same state of facts, unhampered by any judicial responsibility.

This was in 1805, only a year before Judge Livingston's promotion to the bench of the Supreme Court of the United States.

An incident in Brockholdst Livingston's career illustrates a remarkable change which the customs of New York have undergone. In May, 1798, while he was practising law, he wrote, for the "Argus" newspaper, a humorous paragraph, relating to a meeting of political opponents assembled to praise John Adams and his administration. The point of the paragraph was, that the meeting was one of young men, presided over by Mr. Fish, a stripling of about forty-eight years, and graced by the presence of Master Jemmy Jones, another boy of sixty, — a proof of patriotic zeal on the part of the rising generation upon which the country was congratulated. The indignation of the last-named of the two gentlemen thus ridiculed found expression in a demand for an explanation from the writer, made while the latter was walking, accompanied by his wife and children, on the Battery, — a demand ending in an assault with a cane. For this Mr. Livingston promptly challenged, fought, and killed Mr. Jones, and quietly returned to his family promenades, — a course which, if it did not accelerate, appears at least not to have retarded his advancement.

Central figures among the lawyers of the city at that period were two persons of small stature but gigantic ambition, whose several fates attracted and have retained to this day a wonderful popular interest, — Aaron Burr and Alexander Hamilton. Their subsequent duel, in which the latter fell, produced as remarkable effects upon the manners of the time as upon the destinies of the parties. The result was an advantage to the fame of the falling man and a fatal victory to the survivor. An encounter, in its

main features of an every-day character, lifted the former into a sudden apotheosis, and hurled the other into complete outlawry. A provocation not less real than such provocations as were ordinarily recognized by the code of honor which prevailed, a correspondence not more foolish than was the fashion, a combat not so revolting in its circumstances as often took place between prominent persons about the same time without disturbing the nerves of the community, all came in one day to the knowledge of the public, and, presto! change! Hamilton was a godlike and immaculate creature, cut down in the flower of his virtue by a smooth and malignant being wearing the human shape, but of a power and wickedness hardly less than Satanic, —a judgment which maintains its hold upon the popular mind to this day. In this judgment there was a double exaggeration. Hamilton was not a saint, by any means, nor was Burr quite a Mephistopheles. The latter had commenced his downward course, but he was still Vice-President of the United States with at least a chance of reaching the higher office, and with the mental resources which had enabled him to rise, undiminished. He had some redeeming traits; but he was radically dishonest, profligate, and criminally aspiring. The penalty he paid was not so absolutely unjust as it was out of proportion to his sins, when compared with the punishment which the world commonly metes out to similar, even the worst offenders. In politics and in life, his principal faith was in the power of subtle and sleepless intrigue; and when that power deserted him, his fall was like Lucifer's. There is a logical fitness in the eventual overthrow and ruin of such a man; but the altogether unusual rancor with which he was hunted by public opinion for thirty-two years, while he lived, and the pertinacity of reprobation with which his memory — as a foil to that of Hamilton — has ever since

been visited, have been nothing less, in a good degree, than a notable triumph of gossip and a caprice of history.

Edward Livingston began his professional career in this field and among these competitors. That he gained at once a respectable, and soon an eminent standing, would prove both his early industry and his uncommon parts. At the starting-point he signally deviated from the usual history of great lawyers. Poverty, obscurity, threadbare patience, and irrepressible tenacity of will are, much oftener than otherwise, the combination which leads through special triumphs to high forensic reputation. No other profession or art exacts from those who would excel in it more absolute devotion than the law. Affluence and ease are clogs upon that kind of devotion. He who reaches the highest rank as a lawyer, in spite of an easy start, must be gifted with an extraordinary bent and an extraordinary will. Mr. Livingston did reach the very pinnacle, as we shall see, without undergoing the customary early struggle against dire necessity. He had a large family connection in the city, as well as in the State. His brother, the Chancellor, had practised there with reputation for several years preceding the Revolution. He had other relatives in the profession, and still others who were active and opulent merchants, and his family name was a strong influence in the community at large. His own expectations as to hereditary property, if not large, were something and indefinite; and he was entirely beyond any pressure of immediate want. On the contrary, he was the petted youngest child of a large, social, and even gay household. The town-house which had been the winter residence of his father when living, continued in the possession of his mother during all these post-Revolutionary years; and here Edward lived with her, and kept his office. The

house was No. 51 Queen Street, which was a part of the present Pearl, above, and beginning at, Wall Street.

The hospitable city drawing-room of Margaret Beekman was frequented by many brilliant men, including most of the members of the bar just mentioned, attracted by the society of Mrs. Montgomery and of her sisters yet unmarried; and the house was much visited by officers and gentlemen of foreign birth, particularly Frenchmen. All the family conversed fluently in the French language, and since their intimacy with Lafayette, had been especially inclined to cultivate the acquaintance of his friends and countrymen.

The staple of conversation in this set was not small-talk, but included earnest discussions of politics and literature. Articles upon such topics, written for the public papers, were often read there by their authors before publication. But the tone of this society was not always solemn; and whatever was ludicrous was seldom passed over without due attention. One evening the company listened to a eulogy upon Washington, read by a foreigner but written in English, so full of unnaturalized idioms that the performance was received at first with smiles, and finally with peals of inextinguishable laughter.

Mrs. Livingston invariably left the company and retired to her own apartment at ten o'clock, after which Mrs. Montgomery and some of her most habitual guests were fond of a game of whist, — a game not interdicted by the pious old lady, but which, in deference to her tastes, they never commenced in her presence. Inquiring on one occasion of a guest, who was a relation and a judge, how late it was, and being told that it was ten o'clock, she playfully replied, "Ah, Maturin, is it not always that hour by your watch?" and laughingly retired.

The good old lady was a close observer of society in

the city. To an intimate friend, Mr. Vanderkemp, she wrote from town, in 1792, — "This place is all gayety and festivity, — parties every night in the week, — fortunes tumbling in the laps of very many people in so rapid a manner as was never dreamt of before. In this flow of riches dissipation abounds. Gaming is carried on to a great extent, and large sums lost and won. A gentleman from Philadelphia is sitting by me, who relates that Mrs. K. took home four hundred dollars won here at the card-table in one sitting. Surely these are great evils. In a retrospective glance at all the great empires of bygone ages, cannot we date their downfall and departure from public virtue and patriotism to the period when wealth and power abounded? Luxury and dissipation with gigantic strides then overturned all that had been achieved by their virtuous fathers, and anarchy and ruin followed. These are examples Americans ought never to lose sight of, and they must make them tremble for our infant empire."

If Edward, whose disposition was always social, was, in these circumstances, tempted on the one hand to forego in any degree that intense application which necessarily precedes success at the bar, he was stimulated on the other hand by the expectations which the family had formed in his behalf. They were proud of his talents, and anxious for their practical display. He managed without neglecting society to include in his professional reading a profounder study of the Roman law, at the same time that he gave much attention to general literature, and especially to the still further perfecting of his acquaintance with several ancient Greek and Latin authors.

On the fly-leaf of his Longinus he wrote, early in this period, the following lines: —

"Longinus, give thy lessons o'er;
I do not need thy rules:
Let pedants on thy precepts pore,
Or give them to the schools.
The perfect beauty which you seek,
In Anna's verse I find;
It glows on fair Eliza's cheek,
And dwells in Mary's mind."

The three ladies here celebrated were the daughters of Charles McEvers, Esquire, a merchant of New York. Their beauty and accomplishments were such as to make the above compliments not mere empty flattery. The oldest, Mary, was Edward's choice, and they were married on the 10th of April, 1788. She was a person of a striking and refined appearance, and known for the sterling and sturdy character of her religion and virtues. The mutual inclination of the parties was seconded by the approbation of both families, and the alliance was happy in every way.

Of this period, extending to the year 1794, little relevant to our subject remains to be said. Mr. Livingston, leading a life of continuous labor, study, and perfect domestic happiness, grew steadily in reputation, until, at the age of thirty, he was eminent in his profession, especially as an advocate, distinguished for an easy, copious, and polished oratory, a dignified and courteous demeanor, and a steady and influential character. The even tenor of the course just described had met with no variation for nine years, except that during the popular struggle which resulted in the adoption of the Federal Constitution he had felt a lively interest and had taken an active part in favor of the measure, and had all the while cultivated a standing and influence in the then forming Republican party, — a thing, with his family connections to aid his own exertions, very easily managed. This led, in 1794, to the interruption of his professional career, in his

nomination and election as a Representative in Congress. On this event, his mother, being congratulated by her friend, Mr. Vanderkemp, wrote in reply, "I thank you for your good opinion of my son Edward's election. If high and virtuous principles joined to a clear head can recommend him to the confidence of his fellow-citizens, he will assuredly enjoy it."

CHAPTER V.

SIX YEARS IN CONGRESS.

A Political Canvass in 1794 — Eminent Men in the House of Representatives — Andrew Jackson — Address to the President — Trials of Randall and Whitney — Exertions in Behalf of American Seamen — Debates on Jay's Treaty — Lafayette at Olmutz — Establishment of Naval Department — Alien and Sedition Measures — Speech against the Alien Bill — John Marshall — Debate on the Case of Jonathan Robbins — Early Attention of Mr. Livingston to the Condition of Penal Laws — Election, in the House, of Jefferson to the Presidency.

MR. LIVINGSTON'S election, as a member of the fourth Congress of the United States for the city of New York, took place in December, 1794; and he was reëlected, in 1796 and 1798, to the two following Congresses. The State of New York then had ten members in the House of Representatives, and the city of New York constituted a congressional district. In the first of these elections John Watts was his competitor; in the second, James Watson; and his own kinsman, Philip Livingston, in the third. The contest on either of the first two of these occasions was not a very polite warfare.

I. Mr. Watts was the member for the same district in the third Congress. He was a partisan of the Administration, and had voted industriously to sustain all its measures. He was of good family, but his talents were not shining, and he is not recorded as having articulated anything but "aye" and "no" during his congressional career. His friends admitted he was no orator, but claimed that he was all the better voter on that account;

while they gave his young rival credit for showy parts, and thence argued that he was not so safe a legislator.

The machinery for the nomination of candidates was not then such a complicated mystery as it has since grown to be. Party organization in this country was not yet a science. Regularity came to be understood afterwards. There was no Convention, as the term is now used; no delegates with credentials, and no contested seats. But the friends of each candidate met, by some unrevealed arrangement, at a tavern, and, placing one of their number in the chair, made their nomination in a series of resolutions of a vague character, indicating rather a personal preference than definite political views. In chronicling the proceedings, one formula served both parties. Each report stated, that, "at a meeting of a respectable number of citizens, at Hunter's hotel, on" such an evening, "for the purpose of considering of a proper candidate to represent this district in the next Congress, the following resolutions were passed," etc. The newspapers printed the accounts in the same words, and left their readers to learn, by further investigation, how the candidates differed in principles and party associations.

But all this was soon made clear enough; for though parties were not yet nominally much organized or defined, all men were taking sides in earnest with or against the administration, and the terms Federalist and Republican were already beginning to have pretty distinct significations. Livingston was a Republican in nature, in opinion, and in associations. Watts was a Federalist, and, during the canvass, was accused by his opponents of having been a Tory in the Revolution.

Little was said or written concerning the political characters of the candidates, but much was said and written relating to their private characters. An anonymous par-

tisan, over the signature of "Senex," made, in a communication to the "Daily Advertiser," an insidious but most virulent attack upon Livingston, by declaring that the character of Watts was unexceptionable; that his property had not been reduced by extravagance, nor swelled by extortion; and that he possessed the merit of not being a pretended bankrupt nor a speculator. The writer begged electors to beware of undue admiration for a babbling eloquence, and to bear in mind that the tongue of Cicero, the discernment of Locke, and the fancy of Shakspeare, blended together, if accompanied by a corrupt and wicked heart, only furnish the means of becoming more eminently mischievous. The tirade was wound up by a quotation from Cicero's denunciation of Catiline.

Mr. Livingston published, over his own name, a dignified note to the editor, in which he referred to the communication of "Senex," and to oral slanders of similar but more direct import, which he understood were passing from mouth to mouth; and informed those who were not personally acquainted with him that he had suffered some pecuniary ill-luck and embarrassment, but that he had contrived to meet all his obligations honorably and promptly, and, especially, that he had never settled any debt for less than its full amount. But he had a champion of less temper, "A Plebeian," who published, in "Greenleaf's Journal," a vehement answer to "Senex," accusing him of outrageous malice and cowardice, and offering, if he would divulge his real name, to impart to him an impressive lesson in good manners, such as, in "A Plebeian's" opinion, he plainly needed and richly deserved.

The city was then divided into seven wards, in each of which, except the second and third, Mr. Livingston led his competitor at the election. The whole number of bal-

lots cast was 3,481; of which 1,843, or a majority of 205, were for Livingston.

The new member first took his seat in the House of Representatives at Philadelphia, on the 7th of December, 1795. He was not one of those forward orators who make half a dozen speeches on the day of their first appearance in a legislative body, and so forfeit all hope of influence in their new sphere; but, though entirely conscious of his powers, he was rather sparing of their display, and acted like a man whose aim was as much to save a reputation as to gain one. The first time he spoke, in proposing an important motion which was carried, he declared himself such a novice in parliamentary proceedings as not to know whether he was in order or not.

Of course, Mr. Livingston was in the opposition, under both Washington and Adams; but his tone in opposition was always dignified and moderate, which is more than can be said with respect to that of his party at large on the floor. In a very short time, he had acquired such weight in the House as has not often attached to so young a member.

The most notable men then in the House of Representatives were Fisher Ames and Theodore Sedgwick of Massachusetts, Albert Gallatin of Pennsylvania, and William B. Giles and James Madison of Virginia. Andrew Jackson was a representative in that Congress from the woods of Tennessee, — the first and then sole member from that State; but he was not elected till the autumn of 1796, and he first took his seat on the 5th of December in that year, it being the first day of the second session.

Early in each session, the whole House in a body called on the President, and presented an address in an-

swer to his speech at the opening of both Houses. On each occasion, Mr. Livingston thought the address as prepared was too undiscriminating in praise of the Administration, and he was in favor of qualifying the expressions accordingly. The last time, he and Jackson voted together in a small minority against the address as it was carried.

In December, 1795, the trials of Robert Randall and Charles Whitney before the bar of the House were commenced. The charge was a breach of privilege in attempting to bribe members. The proceedings occupied considerable time, and brought out explanations from a large number of Representatives, which showed that Randall, having a scheme for purchasing from the Government, at a nominal price, the wilderness which has since been transformed into the State of Michigan, naïvely supposed that the best as well as most direct way of achieving his purpose was to take in a clear majority of both Houses of Congress as partners; and he accordingly broached the subject to quite a number of the most influential members before he was arrested. After he was brought to the bar, a committee of privileges, consisting of seven members, was appointed, and instructed to consider and report the proper mode of proceeding. Mr. Livingston was selected as one of the committee. The accused were allowed to appear by counsel, and the accusing members reduced their several statements to the form of affidavits, and submitted to cross-examination. Mr. Livingston took but little part in the discussions to which the case gave rise; but at the close of the trial of the principal offender he brought in two resolutions, — the first declaring Randall guilty, and the second directing that he should be called up to the bar, reprimanded by the Speaker, and recommitted until the further order of the

House. The resolutions were adopted, and carried into effect.

The case against Whitney was not so clear. He was interested in the scheme, but in the business of opening the project to members of Congress had been either more circumspect or more indolent than Randall; so that the evidence against him was insufficient to convict him, and he was, by resolution of the House, discharged. Livingston voted for the discharge, on the ground of a want of legal evidence upon which to rest a conviction of the prisoner; though he confessed that the impression on his mind was that both Randall and Whitney were guilty. "They have not been in good company," he said. "I do not like the proposal they have made to members the better because it originated with British merchants. '*Timeo Danaos et dona ferentes.*' I dread these Britons and the gifts they bring."

In February, 1796, the young member originated in the House a measure which evinced the early bent of his character towards active philanthropy. It was a measure for the protection of American seamen, who had been extensively impressed into the service of foreign powers, especially that of England. He complained eloquently of the apathy of the Government on the subject, and declared that he should always think it his duty to strive to obtain for this ill-treated body of men some relief. He succeeded, not without opposition, in procuring a reference of the subject, and, afterwards, the passage of the act of May 28, 1796.

While the report of the committee was before the House, Mr. Livingston made the following remarks, which show the nature of the opposition he met with in this endeavor, and the spirit with which he encountered it: "On the introduction of this business into the House,

it was said that a young member had thrown obloquy on the Government. I uttered nothing but facts. I said that the distressed American seamen had for five years looked in vain for relief. The Government may have had prudential reasons for its conduct. I thought it time, however, the subject was attended to. It is true, I am young; but I am not inattentive to the public business, and I shall always hold it my duty to persevere in such measures as appear to me calculated to promote the public good; nor shall I be deterred from engaging in a business because it may not have been attempted before, for that principle would shut out all improvement."

When Livingston had been three months in his seat, an occasion arose for the display of his powers. The House was called upon to make the appropriation required to carry into effect the treaty with Great Britain of 1794, the work of Mr. Jay. The treaty had given rise to great bitterness and excitement in Congress and throughout the country. In the House, the opposition was all but sufficient to defeat the appropriation, though the amount was only ninety thousand dollars. The discussions there occupied the best part of March and April, 1796. They were divided into two distinct debates, each consuming about a month. The first began on a preliminary resolution offered by Mr. Livingston, calling on the President to lay before the House a copy of the instructions to Mr. Jay, together with the correspondence and other documents relative to the treaty, excepting such as any existing negotiation might render improper to be disclosed, and continued after that resolution had passed and the President had refused to comply with it, upon further resolutions brought forward by Mr. Blount of North Carolina, protesting against the refusal. The

second was upon a resolution making the appropriation for carrying the treaty into effect.

These two debates brought out all the intellect and all the eloquence of the House. Uncommon refreshment is to be found in turning to these discussions from perusing the usual parliamentary efforts of the statesmen of our era. A large number of orators, whose names oblivion has since overcome, vied in wisdom, temper, and eloquence with such men as James Madison, William B. Giles, Theodore Sedgwick, and Fisher Ames. The celebrated Bostonian delivered, on this occasion, what is known as his greatest speech.

The steady pertinence of all that was said on the floor to the exact matter before the House, notwithstanding the excitement which filled the atmosphere, was marvellous. In the course of thirty-two speeches there was not, I believe, one departure from the question. It was, throughout, a fine clash of genuine convictions as to the relative rights and obligations, under the Constitution, of two principal branches of the Government.

Mr. Livingston opened the debates with a general statement of the views which influenced him in bringing forward his resolution. He desired the information, to enable the House to take whatever action might seem fit in the light of the information when obtained. If it should show that the officers who had negotiated the treaty ought to be impeached, then their impeachment would turn out to be one of the ultimate objects of the call for papers. Such a purpose could not be definitely declared or entertained by the House until the papers were seen. The House, as the accusing organ of the government and guardian on every occasion of the country's rights, was entitled to the information, for the purpose of elucidating the conduct of the officers. But he placed

the demand mainly upon the broad ground that the House was vested with a discretionary power of carrying the treaty into effect or refusing it sanction.

The members took sides at once, and spoke alternately, for and against the resolution, from the 7th till the 24th of March. Gallatin, Madison, and Giles were among the earliest and most strenuous supporters of the resolution; Sedgwick, and John Williams of New York, were conspicuous in opposition to it. All these and several others had delivered very elaborate arguments upon the question before Livingston rose, on the 19th of March, to make his principal effort.

The delivery of this speech occupied nearly a day, and it was a wonderful performance for so young a man and a statesman so inexperienced. A reader of all that was said on both sides of the question, if ignorant of the fame of any of the orators, would pronounce this one to be the Nestor of the debate. There is no sign of youthful ambition in the style or in the matter. The fruits of earnest research and reflection, aided by a wealth of constitutional and historical learning, are set forth by him in an easy diction, and in a wise and quiet tone worthy of a legislative patriarch. The following lively passage, however, exhibits a fine and rapid blending of argument, eloquence, humor, and dignity: —

"Thus, to whatever source of argument we refer, we find the constitutional power of this House fully established; whether we recur to the words of the Constitution, where the power is expressly given and is only to be lost by implication; whether we have recourse to the opinions of the majorities who adopted the Constitution, to the uniform practice under it, to the opinions of our constituents as expressed in their petitions, or to the analogous proceedings in a government constructed, in

this particular, like our own. Yet, after all this, we are told that if we question the supremacy of the treaty-making power, we commit treason against the constituted authorities, and are in rebellion against the government. These are grave charges, and made in improper language. I have not been so long in public life as those gentlemen who make them, but I will boldly pronounce them unparliamentary and improper. Besides, this language is wrong in another view: it may frighten men of weak nerves from a worthy pursuit. For my own part, when I heard the member from Vermont compare the authority of the President and Senate to the majesty of Heaven, and the proclamation to the voice of thunder; when he appealed to his services for his country, and showed the wounds received in her defence; when he completed his pathetic address by a charge of treason and rebellion, I was for a moment astonished at my own temerity; his eloquence so overpowered me, that

> 'Methought the billows spoke and told me of it,
> The winds did sing it to me, and the thunder,
> That deep and dreadful organ-pipe, pronounced'

the charge of treason. I was, however, relieved from this trepidation by a moment's reflection, which convinced me that all the dreadful consequences arose from the gentleman's taking for granted that which remained to be proved. He had only assumed that the measure was unconstitutional, and the rest followed, of course. From my soul, I honor the veteran who has fought to establish the liberties of his country. I look with reverence on his wounds, I feel humbled in his presence, and regret that a tender age did not permit me to share his glorious deeds. I can forgive everything that such a man may say, when he imagines the liberty for which he has fought is about to be destroyed; but I cannot extend my charity

to men who, without the same merits, coolly reëcho the charge."

The drift of this argument, and of the other efforts on the same side of the question, was that the organic provision that "the Constitution, the laws made in pursuance thereof, and treaties made under the authority of the United States should be the supreme law of the land," was intended as an enumeration, descriptive of the relative force of Constitution, laws, and treaties. The first in authority was the Constitution, which no other act could operate on. The second in order were the laws made in pursuance of the Constitution; and the third were treaties, when they contravene neither the Constitution nor the laws. The last must be subordinate to each of the other two, as would be reasonable, or else override both, as would be absurd. This view of the subject was enforced by an elaborate examination of the nature and object of the treaty-making power, and its analogy to that vested in the Crown by the British constitution, under which several instances were cited of the practice of Parliament, by virtue of its general legislative authority, to give or withhold its sanction to treaties concluded by the King. And besides, cases were adduced in the then very brief history of our own government, in which, as Mr. Livingston asserted, the discretion of the House of Representatives over the subject of carrying treaties into effect had been recognized by the President, acquiesced in by the Senate, and acted upon by the House.

The question was taken on the 24th of March, when the resolution was adopted by a vote of 62 yeas to 37 nays. On the 30th, the President responded to the call, in a courteous message, in which he refused to comply with the resolution, on the ground that to admit a

right in the House to make such a demand would be the establishment of a dangerous precedent. Such a right he distinctly denied. The nature of foreign negotiations, always requiring caution and sometimes depending on secrecy for their success, and the inconvenient, dangerous, or mischievous effect which publicity might often exert on future as well as on unfinished negotiations, had made necessary the express provision of the Constitution, vesting the treaty-making power in the President, with the advice and consent of the Senate only. The message declared that it did not occur to the President that the inspection of the papers asked for could be relative to any purpose under the cognizance of the House except an impeachment, and that such a purpose the resolution failed to express. The grounds of the presidential construction of the clause in question were set forth with care and in full in the message, which embodied the substantial points of all that the champions of the Administration had said in the House in the discussion of the resolution.

The message was referred to a committee of the whole House. After several days' further debating, two resolutions were carried, by 57 yeas against 35 nays: the first disclaiming any agency in the making of treaties, but insisting that it is the right and duty of the House to deliberate on the expediency or inexpediency of carrying into effect a treaty which stipulates regulations on any of the subjects submitted by the Constitution to the power of Congress, and depends for its execution on a law or laws to be passed; the second declaring that it is not necessary to the propriety of any application from the House to the Executive, for information to which the House is entitled, that the purpose for which such information is sought should be stated in the application.

Having undertaken to define its rights in such cases, the House proceeded to consider whether the appropriation needed to carry out the treaty should be made. The debate which followed occupied sixteen days. It was in it that Mr. Ames made, in favor of the measure, the finest recorded display of his powers. Madison, Gallatin, and Giles labored with their party to defeat it. Livingston took no part in the discussion, but voted against the appropriation, which, on the final division, was carried by the nice vote of 51 yeas against 48 nays.

On the last day of the second session, March 3, 1797, a resolution was brought forward in the House, recommending some kind of interposition by the President in behalf of Lafayette, then at Olmutz. Mr. Livingston spoke with much feeling and eloquence in support of the resolution, which was nevertheless lost, only twenty-five members voting for it. Washington had considered the subject of official exertion towards the release or relief of our country's noble and early friend, and had concluded that such exertion would be inexpedient and useless. Unofficial efforts were tried, but proved vain; and the deliverance of the illustrious captive, having been denied by Austria to the entreaty of Washington, was finally yielded to the persuasion of Napoleon's arms.

II. The second election of Mr. Livingston to Congress was by a majority of 550 votes, the seventh ward of the city having been transferred to the Westchester district. The celebrated De Witt Clinton was secretary of the meeting at which the nomination was made. The canvass was more spirited than the former one. The candidate had earned, or at least now incurred, the bitter and active opposition of Alexander Hamilton, who,

during the three days of the election, visited the several polls for the purpose of influencing electors in favor of the Federalist candidate, James Watson. Mr. Hamilton was accredited, erroneously, I presume, with the authorship of a handbill which was much circulated at the polls, and which set forth multitudinous reasons for returning Mr. Watson in Mr. Livingston's place, — one of the best of which reasons was that the latter had so little sympathy with the people as to drive a chariot. The force of this argument was impaired by the retort in the Republican journals of the fact that Mr. Watson drove a chariot likewise. Thus it was Hobson's choice with the electors, so far as the chariot question was concerned. The other considerations which were urged for and against the candidates being, in general, less important, need not be mentioned. Mr. James Watson appears to have been an enterprising politician who held several offices in both State and nation, and once got into the Senate of the United States, where he sat from December, 1798, until March, 1800.

The commanding position in which Mr. Livingston stood before the public at this period is illustrated by the remarks of a distinguished French traveller, who, describing what he saw at New York, named, under the head of "personages who deserve particular mention," but three men, — Hamilton, Burr, and Edward Livingston, and gave to the last the most extended notice of the three, styling him "one of the most enlightened and most eloquent members of Congress in the party of the opposition." *

The following extract from a letter, written in February, 1796, by Chancellor Livingston to his much

* *Voyage dans les États-Unis d' Amérique, fait en 1795, 1796, et 1797.* Par La Rochefoucauld-Liancourt. Tome Septième, page 151.

younger brother Edward, shows how affectionate was the desire of the former that the latter should not only maintain the distinction he had gained, but that he should earn and enjoy additions to it: —

"As I naturally feel myself much interested in your political career, I cannot but entreat you to consider that you are at this moment making immense sacrifices of fortune and professional reputation by remaining in Congress. Nothing can compensate for these losses but attaining the highest political distinction. But, believe me, this will never be attained without the most unwearied application, both in and out of the House. Read everything that relates to the state of your laws, commerce, and finances. Form and perfect your plans, so as to bring them forward in the best shape. Forgive, my dear brother, both my freedom and my style. I write from my heart, not from my head. Be persuaded that no extent of talent will avail, without a considerable portion of industry, to make a distinguished statesman."

The Naval Department of the government, as an offshoot of the Department of War, was established by law in April, 1798. It was a measure of the Federalists and the Administration. The Republicans opposed the establishment, and Mr. Livingston spoke and voted against it. The opposition went upon grounds of economy and simplicity, in keeping the management of both army and navy under one head, and the inexpediency of enlarging the naval defences. The bill passed in the House of Representatives by a narrow majority.

A little later in the same session, the two notorious measures of the Government, known as the Alien and Sedition laws, were brought forward, and passed by a majority in the House. It is most astonishing that Mr. Adams and his friends should not have known better than

to believe it possible to establish two such acts under our free Constitution, which they had had so large a share in framing. The Alien bill invested the President with power to order dangerous or suspected aliens to depart out of the territory of the United States; or, in case of disobedience, to imprison and perpetually exclude from the rights of citizenship; or, after an order to depart, to grant a license to remain for such time as the President should deem proper, and at such place as he should designate. The Sedition law made it a high misdemeanor, punishable with fine and imprisonment, to combine with intent to oppose any measures of the Government of the United States, or to traduce or defame the Legislature or the President, by declarations tending to criminate the motives of either. Both these odious measures were passed under the spur of party discipline. Both excited at once the bitterest opposition of the Republican party, and presently incurred the hearty abomination of the country. Such experiments in legislation are not likely to be repeated while our form of government lasts.

Mr. Livingston achieved national fame by the conspicuous eloquence and vigor of his opposition to these measures. Having been absent from his seat for some time, and returning on the eve of the passage of the Alien bill, he delivered, on the 21st of June, 1798, a vehement argument against it. The following were his opening words:—

"Mr. Speaker: I esteem it one of the most fortunate occurrences of my life, that, after an inevitable absence from my seat in this House, I have arrived in time to express my dissent to the passage of this bill. It would have been a source of eternal regret and the keenest remorse, if any private affairs, any domestic concerns,

however interesting, had deprived me of the opportunity I am now about to use, of stating my objections and recording my vote against an act which I believe to be in direct violation of the Constitution, and marked with every characteristic of the most odious despotism."

After proceeding to prove that the bill was not only at war with the spirit of the Constitution, but also in plain conflict with its letter in several particulars, and after showing how long a step towards despotism would be made by the enactment of such a law, he predicted a direct resistance by the people of the United States, and declared that such resistance would be right, — an imprudent utterance which drove him, under a pressure from the advocates of the measure, to the indefensible doctrine that the people are themselves the rightful judges, in the first instance, of the constitutionality of acts of Congress. The ardor of his convictions upon the vitally important subject under consideration here carried him beyond the wisdom and moderation habitual to him, even at this early age.

This entire speech well merits the attention of every intelligent American. Its length precludes its insertion here, and it is difficult to present extracts, as samples of the whole performance. It was characteristic of all Mr. Livingston's productions, to display a copious and uniform power rather than any salient and occasional beauties; not irregular and brilliant flashes, but a fine and steady light. Yet I cannot refrain from quoting one eloquent passage, including the indiscreet sentiment to which allusion has been made: —

"But if, regardless of our duties as citizens, and our solemn obligations as representatives; regardless of the rights of our constituents; regardless of every sanction, human and divine, we are ready to violate the Consti-

tution we have sworn to defend, — will the people submit to our unauthorized acts? will the States sanction our usurped power? Sir, they ought not to submit; they would deserve the chains which these measures are forging for them, if they did not resist. For let no man vainly imagine that the evil is to stop here; that a few unprotected aliens only are to be affected by this inquisitorial power. The same arguments which enforce those provisions against aliens, apply with equal strength to enacting them in the case of citizens. The citizen has no other protection for his personal security, that I know, against laws like this, than the humane provisions I have cited from the Constitution. . . . . You have already been told of plots and conspiracies; and all the frightful images that are necessary to keep up the present system of terror and alarm have been presented to you; but who are implicated in these dark hints, these mysterious allusions? They are our own citizens, Sir, not aliens. If there is any necessity for the system now proposed, it is more necessary to be enforced against our own citizens than against strangers; and I have no doubt that, either in this or some other shape, this will be attempted. I now ask, Sir, whether the people of America are prepared for this? Whether they are willing to part with all the means which the wisdom of their ancestors discovered and their own caution so lately adopted, to secure their own persons? Whether they are willing to submit to imprisonment, or exile, whenever suspicion, calumny, or vengeance shall mark them for ruin? Are they base enough to be prepared for this? No, Sir, they will, I repeat it, they will resist this tyrannical system; the people will oppose, the States will not submit to its operations; they ought not to acquiesce, and I pray to God they never may.

"My opinions, Sir, on this subject are explicit, and I wish they may be known. They are, that, whenever our laws manifestly infringe the Constitution under which they are made, the people ought not to hesitate which they should obey; if we exceed our powers, we become tyrants, and our acts have no effect. Thus, Sir, one of the first effects of measures such as this, if they be acquiesced in, will be disaffection among the States, and opposition among the people to your government; tumults, violations, and a recurrence to first revolutionary principles; if they are submitted to, the consequences will be worse. After such manifest violation of the principles of our Constitution, the form will not long be sacred; presently every vestige of it will be lost and swallowed up in the gulf of despotism. But should the evil proceed no further than the execution of the present law, what a fearful picture will our country present! The system of espionage thus established, the country will swarm with informers, spies, delators, and all that odious tribe that breed in the sunshine of despotic power and suck the blood of the unfortunate, and creep into the bosom of sleeping innocence, only to awaken it with a burning wound. The hours of the most unsuspecting confidence, the intimacies of friendship, or the recesses of domestic retirement, afford no security; the companion whom you must trust, the friend in whom you must confide, the domestic who waits in your chamber, are all tempted to betray your imprudence and guardless follies, to misrepresent your words, to convey them, distorted by calumny, to the secret tribunal where Jealousy presides, where Fear officiates as accuser, and where suspicion is the only evidence that is heard."

This speech produced a thrilling effect upon the popular mind of the nation. It was printed upon satin,

and reached all classes. The author was deluged with petitions from the several States for a repeal of the law, to be presented at the next session. The repeal was refused by Congress, but both the Alien and Sedition laws expired by their own limitation: the former two years from its passage, the latter on the last day of Mr. Adams's term of office.

On the 5th of July, while the Sedition Act was under consideration in the House, Mr. Livingston moved to reject the bill without a second reading. On this occasion he delivered a speech in favor of freedom for speech and for the press, which was characterized by an orator on the other side as bold and violent, and as calculated to awaken, in well-regulated minds, emotions of fear and horror. A Federalist member from Connecticut shuddered, and felt the blood freeze in his veins, when he contemplated the probable effects of "the liberty of vomiting on the public floods of falsehood to everything sacred, human and divine." "If any man," he exclaimed, "doubts the effects of such a liberty, let me direct his attention across the water; it has there made slaves of thirty millions of men." But the boldness and violence of language thus denounced, led and settled the permanent public opinion of the country with reference to freedom of speech and of the press.

In January, 1798, Mr. Livingston carried through Congress a measure for the payment of an annuity to each of the four orphaned daughters of the Count de Grasse, though the gratitude thus expressed by the representatives of the nation was not quite as liberal as he desired and urged. The sum devoted to this object was four hundred dollars to each of the ladies annually, for five years, — a thrifty acquittance of such a debt as was thus acknowledged.

III. Mr. Livingston's third election to Congress occurred in April, 1798, two months before he had made his powerful and most popular demonstrations against the Alien and Sedition bills. Had it been otherwise, no opponent could have taken the field against him with any chance of success. As it was, the canvass was tame in comparison with the two preceding ones. His majority was only 175 votes.

It was in the sixth Congress, and in December, 1799, that John Marshall first appeared as a member of the House, and took at once the leadership of the Government's side. In March following, he delivered the most renowned of all his public speeches, in a debate set on foot by Mr. Livingston. The question was on the conduct of the President, Mr. Adams, in the case of Thomas Nash, *alias* Jonathan Robbins. That person, having committed a murder on board a British frigate on the high seas, and having escaped to this country, had been arrested and committed for trial under the laws of the United States, in the Federal court for the District of South Carolina. The British government demanded his extradition, under the provisions of the 27th section of Jay's treaty. He was surrendered, tried by an English court, convicted, and executed. Mr. Adams had officially taken an active part in the business of the extradition, by writing to the judge of the court in South Carolina to the effect, that, in the President's opinion, "an offence committed on board a public ship of war, on the high seas, is committed within the jurisdiction of the nation to whom the ship belongs," for which reason the judge was advised and requested to deliver up the prisoner to the agent of Great Britain, provided only the proper evidence of his criminality should be produced. Robbins had claimed to be an

American citizen, and to have been impressed on board the British vessel.

Here was matter enough for a great deal of honest and bitter controversy. The odium which had originally attached to the treaty in the minds of a portion of the people was revived and aggravated by the circumstance just referred to. The fury of the Republican opposition found mild expression in a series of resolutions, offered by Mr. Livingston, declaring, in substance, that the several questions involved in the case were matters exclusively of judicial inquiry; that the decision of those questions by the President was a dangerous interference of the Executive with judicial decisions; and that the compliance of the judge in this case was a sacrifice of the constitutional independence of the judicial power, and exposed the administration of the latter to suspicion and reproach.

To a young Republican orator the temptation was strong to make the most of the circumstance of Robbins's claim of citizenship, in order to deal a severe blow upon the popularity of the administration. But to that temptation Mr. Livingston did not yield. He declared his belief that Robbins was an Irishman, and that he was guilty of the crime with which he was charged. In his view, by that admission he did not at all surrender the point of his resolutions, the design of which was to try the naked question of the right of the Executive to interfere in the least with the Judiciary in the exercise of its functions in a case of extradition under a treaty, when the subject of it is in custody. The argument of Mr. Marshall was largely addressed to the task of answering specifically the several positions advanced by Mr. Livingston. It was a gigantic vindication of the President, and of the exclusive right of the Executive

to decide such a question; and, as an argument, fully merited all the fame it brought to its author. It will be found one of the most wonderful of all recorded displays of the power of exhaustive analysis, terse statement, and compact reasoning. But it is a task beyond the power of any talents to satisfy a mind unbiased, enlightened, and accustomed to the true definitions and boundaries of judicial and executive functions in a free government, that the President can properly exert an official influence upon any judicial order whatever. Nevertheless, the resolutions were defeated by a vote of 85 to 61.

Only a few days after Mr. Livingston had first taken his seat in Congress, he offered a resolution that a committee be appointed "to inquire and report whether any and what alterations should be made in the penal laws of the United States, by substituting milder punishments for certain crimes, for which infamous and capital punishments are now inflicted." The committee was appointed, and he was made its chairman. Later in the same month, he offered a second resolution, which was carried, requesting the President to obtain, for the information of Congress, detailed statements respecting the trials and convictions which had taken place under the existing laws. This information was not furnished. A year afterwards, Mr. Livingston moved for the appointment of a committee "to inquire and report whether any and what alterations are necessary in the penal laws of the United States, and that they report by bill or otherwise." The motion prevailed, and he was appointed chairman of the new committee. I do not find that the latter ever made any report, and the matter is only mentioned here for the purpose of showing how early the general subject of

the Livingston Code had engaged the attention of its author.

Mr. Livingston was not a candidate for reëlection to the seventh Congress, and was succeeded in his seat by the celebrated Dr. Samuel L. Mitchill. The close of this his first congressional career was signalized by the election of Mr. Jefferson to the Presidency of the United States in the House of Representatives. The electoral votes, when counted, were found to be, 73 for Mr. Jefferson, 73 for Mr. Burr, 65 for Mr. Adams, 64 for Mr. Pinckney, and 1 for Mr. Jay. Thus the election devolved, by the Constitution, on the House, and the choice for both President and Vice-President was reduced to Jefferson and Burr; for, on the election of either, in the circumstances stated, to the first office, the second would, by the Constitution, immediately attach to the other. Between the two the destiny of the country hung through seven days and thirty-six ballotings. There were then sixteen States. A majority of the Representatives from each State determined its vote. A majority of the States was necessary to an election. The votes of nine States were therefore required to effect that result.

Thirty-five ballotings ended alike, showing eight States in favor of Jefferson, six for Burr, and two equally divided. On the thirty-sixth balloting, Jefferson was found to have received the votes of ten States, while four adhered to Burr and two cast blank ballots. Mr. Jefferson's election was thereupon declared, and Mr. Burr, by law, became Vice-President.

This crisis, in which a few bold politicians came very near overruling the well-known intention of a majority of the people of the United States, and for the time setting the fundamental principles of our government at

nought, grew out of a clumsy provision in the Constitution. Then, as now, the vote of the people in each State was for a set of electors of the same number as the Representatives to which the State was entitled; and the electors thus chosen in all the States afterwards met, in electoral college, to ballot for President and Vice-President. But the provision referred to required each member of the electoral college to ballot simply for two persons, without indicating the office for which either was designed. Of course, this mode of balloting would always result in a tie between the two candidates of the successful party for the higher and the lower office, unless there should be an arrangement by the party in the electoral college, by which some one at least of the electors should cast a blank ballot, or one in favor of a name not really in the canvass, as was done by the Federalists, in this instance, by transferring a single ballot to Mr. Jay. How such an arrangement came to be omitted by the Republicans is matter of some mystery. Burr and his friends had certainly anticipated such a result; and they had probably brought it about by some subtle but active means which cannot now be explained. At all events, they were on the lookout the moment the mischance became known, and were not long in perfecting a league with the Federalist leaders in the House of Representatives, who, when the time of the election came, made a sturdy attempt, under the leadership of Mr. Bayard, the sole representative of Delaware, to elevate Burr over Jefferson, as a choice between political evils. The attempt was persevered in until its success was demonstrated to be hopeless, and a choice became imminent between a government with Jefferson at the head and no government at all. Then, the election was yielded, not graciously, to Jefferson.

During this contest, of which not all the details are pertinent to my task, Mr. Jefferson steadily received the vote of New York. This was done by a majority of two in the delegation, six members voting for Jefferson and four for Burr. Of course, a tie, and a loss of the State's vote would have been produced by the going over from the former to the latter of a single member. A loss of the vote of New York, though it would not on the final balloting have been fatal to Jefferson's election, would have been likely, if occurring at an earlier stage of the controversy, to have that effect.* Livingston was one of the six constant adherents of Jefferson, and thus held, in the contest, a balance of influence which he might have wielded in the interest of Burr, of his own State and city, with whom his relations, professional, political, and personal, of many years' standing, had till then been intimate.

Under these circumstances, he appears to have been marked by Burr as a subject for cautious temptation. Judge Van Ness wrote to him from Albany that "it was the sense of the Republican party in the State of New York, that, after some trials in the House, Mr. Jefferson should be given up for Mr. Burr." Bayard, while the indeterminate balloting in the House was going on, approached Livingston, — or, to employ his own language, took occasion to sound him,—and stated that he had understood the latter was the confidential friend and agent of Mr. Burr, and was ready to coöperate at an appropriate opportunity in his election. Livingston's answer, according to the testimony of Bayard, subsequently given

* I find no ground for believing that the requisite nine States could have been secured for Burr in any event; but a defection of New York from Jefferson might very well have influenced the Federalist Representatives to persevere in what they did gravely contemplate, the holding out until the 4th of March, and thus preventing any constitutional election whatever.

on oath in a court of justice, was a very distinct but rather dry denial of any such agency or design, leaving on Bayard's mind an impression that he felt no zeal in Jefferson's behalf, but that he would not give his ballot to Burr in any event. What notice, if any, he took of Van Ness's letter, does not appear. The secret diary of Jefferson shows that his relations with the latter during the struggle were of the most confidential character, and that the attempt upon him by Burr and his satellites did not receive sufficient encouragement to take distinct shape.

Besides the State of New York, whose suffrage would have been recorded for Burr if two of its Republican Representatives had given him their ballots, there were four States — Vermont, Maryland, Tennessee, and Georgia — either of which would have been secured for him by a like change of a single ballot. Any three of these five, if thus won over, would have made up the nine States required to effect his election. What three States so needed were those which the Machiavelian chief and his confederates most definitely counted upon being able to swerve about "after some trials" is not quite clear. There is no good evidence that the hope of gaining over any of the five was reasonably conceived. None of them wavered visibly during the thirty-five indecisive ballotings; and on the thirty-sixth, the Federalists, in despair, decided, — not to lend a single voice to Jefferson, besides that of Mr. Huger of South Carolina, who had from the first kept aloof from the action of his party in the House, but to cast blank ballots instead of those which till then had been thrown for Burr in the equally divided and therefore neutralized votes of Vermont and Maryland. These two States were in this way

added to those which had all the while adhered to Jefferson, and the struggle was over. Burr from this moment started upon that tedious career of infamy, whose downward course the killing of Hamilton so impressively precipitated.

CHAPTER VI.

OFFICES AND MISFORTUNES.

Approaching Change in Mr. Livingston's Career — Death of his Wife — Appointment as Attorney of the United States, and as Mayor of New York — Variety of Functions — Germ of the Livingston Code — Manners and Tastes — Conduct during the Prevalence of Yellow-Fever in the City — The incurring of a Debt to the Government — Circumstances of the Affair — Conduct in that Difficulty — Resignation of Offices — Honors thereupon received — The Purchase of Louisiana — Letter from Lafayette — Departure for New Orleans.

WE come, now, to the middle period of Livingston's life, — a period of protracted trials, vicissitudes, and storms. The manner in which he bore himself under long accumulating misfortunes, and triumphantly rid himself of the burden at last, is what will lend to the narration its highest interest.

The same month in which he retired from Congress, and from the scenes which attended the election of Jefferson, he sustained the first* of a series of domestic afflictions, destined in all their circumstances to try to its utmost the strength of his philosophy. Of this bereavement, caused by scarlet-fever, he afterwards made in his Bible the following record: "On the 13th of March, 1801, it pleased Heaven to dissolve an union which for thirteen years it had blessed with its own harmony, with an uninterrupted felicity rarely to be met with; formed by mutual inclination in the spring of life, it was cemented by mutual esteem in its progress, and was ter-

* The first except the death of his mother, which occurred suddenly, at an advanced age, in July of the preceding year.

minated by a stroke as sudden as it was afflictive." They had had three children, Charles Edward, Julia Eliza Montgomery, and Lewis, born respectively in 1790, 1794, and 1798, and these all survived to him.

A few days after sustaining this blow, and while his grief was yet in its sharpest stage, he received from Mr. Jefferson a commission appointing him to the office of Attorney of the United States for the District of New York, then comprising the whole State, in place of Richard Harrison, removed. This was an acceptable office, because it was honorable and profitable, while its functions were in the line of his profession, the labors of which he had determined actively to resume.

At the same time a movement had been on foot for several months in the Republican party in the city and at Albany for the removal of Richard Varick from the office of Mayor of the city of New York, and the appointment of a Republican in his stead. The only difficulty was to unite, upon an individual, the elements which composed the Council of Appointment sitting at Albany, as influenced by the Republican members of the legislature. This was done in August following; and Edward Livingston was then named for the place without a dissenting voice in the council. On the 24th of the month he was formally installed in the office.

The mayoralty of New York was then esteemed to be, and was in fact, a post of great dignity and importance. The celebrated De Witt Clinton, in order to accept it, resigned his seat in the Senate of the United States. Since the close of the war, the population had grown from twenty thousand to upwards of fifty thousand, and the rate and prospect of increase continued. All the municipal offices of the city were respectable. The Mayor presided over the deliberations of the common

council, and, superadded to all his executive functions, he was, as we have already seen, the presiding judge of a high court of record, possessing both civil and criminal jurisdiction. The emoluments of the place were in the form of liberal fees and perquisites; and a few years' incumbency, carefully managed, was equivalent to a handsome competence.

The holding of two such offices at the same time, — the one under the Federal, the other from the State government, — which would not now be thought compatible, excited no cavil then; and both these appointments, being for short terms at first, were renewed the next winter.

Party spirit had at that time acquired a good deal of earnestness in both city and State. A public dinner was given to Mr. Varick by the Federalist lawyers, at which a rather warm dissatisfaction on the subject of his removal was expressed. Toasts were drunk, twenty-five in number, which, if read now, have a labored, obscure, and pedantic sound; and their political bitterness, though not very outspoken, is more apparent than their pointedness.

Thus Livingston, at the age of thirty-seven, after a distinguished as well as a smooth and happy career, found himself still borne forward upon a tide of prosperity, reputation, and influence. From this point the reader will obtain more frequent as well as more distinct impressions of the personal habits and qualities of an extraordinary man: a marvellous industry which would have soon destroyed any but the soundest constitution, and which enabled him, in the midst of every-day avocations and cares, to accomplish a work pronounced by a French publicist to be "without example from the hand of any one man;" a steady philanthropy which was his chief incentive; an equal aptitude for affairs, society,

or study; a peculiar simplicity of heart joined to unsurpassed intellectual acumen; an extreme gentleness grafted upon unconquerable energy; and a temper after childhood never once overset.

He did not rest for a moment in the possession of his new dignities, but devoted his whole energy to the duties which they imposed. We presently find him presiding on important capital trials, where his charges to juries are described by the journals of the time as extraordinarily impressive. But he made no discrimination between these conspicuous functions and those useful labors which are performed out of the public view. He at once undertook a reformation of the rules and practice of the court in civil actions, and soon commenced the preparation of a volume* of reports of such of his own and the recorder's decisions as he thought should be generally known to the bar. This was before any regular reporting of the judgments of either the city or State courts had been undertaken, and when but a single volume of reports — that of Colman's Cases — had appeared.

A greater variety of functions could hardly be heaped upon the hands of one man. The president of a court of justice and of a deliberative body, he must appear as an advocate in all causes of importance in his district in which the Federal Government was interested, and, in turn, superintend the administration of multifarious municipal affairs, from the regulation of finance to the assize of bread. The strides which the town was then making towards its present metropolitan proportions are well indicated by the fact that the city-hall, at that time

* *Judicial Opinions, delivered in the Mayor's Court of the City of New York in the year* 1802. Forsitan et hæc olim meminisse juvabit. New York: Printed and published by D. Longworth, at the Shakspeare Gallery near the Theatre, 1803.

projected and commenced,—though it long since ceased to be adequate to the purposes of its construction,—was at first magnificent in view of its required uses, as well as by the fact that the dark-colored stone employed in the construction of its rear or northern wall was used instead of the marble of the three other sides, for the reason that that wall would be out of sight of all the world. The corner-stone was laid by the Mayor with appropriate ceremonies, in 1803.

The Mayor was required, by the custom of the period, to devote to the public and private entertainment of distinguished strangers a degree of attention which the growth of the city and of the world's travel afterwards rendered impossible. For this duty Mr. Livingston was eminently fitted, and he discharged it with conscientiousness and pleasure. His residence was at No. 1 Broadway, the windows overlooking the Battery. The large trees upon this common were planted during his administration and under his direction.

An ordinary man would have found enough to occupy all his faculties and desires in the labors, the *éclat*, and the profits of these offices. But Livingston, whose mind, as we have seen, at school and college had strayed in fields of poetry and philosophy; who during the early and successful practice of his profession had found leisure for the prosecution of varied liberal studies; and who as a legislator had planned and laboriously matured comprehensive measures of mere humanity, now, in the midst and whirl of these occupations, conceived and first publicly broached an original project which appears to have been the germ of that great scheme of philanthropy to the perfecting of which he was yet to devote his best energies for many years. In a communication to the Mechanic Society he proposed that an organized

attempt should be made by the society, jointly with the city government, to found an establishment in which to assure the employment of, first, strangers during the first month after their arrival; secondly, citizens, who, from the effects of sickness or casualty, have lost their usual employment; thirdly, widows and orphans, incapable of labor; and, fourthly, discharged or pardoned convicts from the state-prison. This experiment would have required a capital and an organization which he thought the city government not prepared to undertake alone, but which he believed practicable as a joint undertaking of the government and the society which he addressed. In this communication there are some touches of the earnestness and eloquence with which he was afterwards wont to write upon these and kindred topics. He dwelt upon some of the results which he hoped would flow from the adoption of the measure; as the suppression of mendicity, the prevention of those crimes which arise from idleness and want, the restoration of unfortunate citizens sunk by misfortune below their former station in society, and the accomplishment of reformation along with the punishment of criminals. "It is," said he, in this paper, referring to the penitentiary system, "a great, I had almost said a godlike experiment, worthy of the free country in which it is made, honorable to the men who planned, and highly creditable to those who conduct it. Its progress is regarded with an interest running into anxiety, by the friends of humanity in every quarter of the world; and its failure, from whatever cause, will check the spirit of improvement that suggested it, and restore the ancient bloody code with all its horrors. But it must be evident that nothing will tend so much to defeat the principal object of reformation, and at the same time endanger the security of the city in which

it is placed, as the situation in which those who have undergone the sentence of the law now stand at the time of their discharge. The odium justly attached to the crime is continued to the culprit after he has suffered its penalty; he is restored to society, but prejudice repels him from its bosom; he has acquired the skill and has the inclination to provide honestly for his support. Years of penitence and labor have wiped away his crime, and given him habits of industry, and skill to direct them. But no means are provided for their exertion. He has no capital of his own, and that of others will not be intrusted to him; he is not permitted to labor; he dares not beg; and he is forced for subsistence to plunge anew into the same crimes, to suffer the same punishment he has just undergone, or, perhaps, with more caution and address, to escape it. Thus the institution, instead of diminishing, may increase the number of offences. This partial defect, so easily remedied, may ruin the system, and put a stop to the fairest experiment ever made in favor of humanity."

"The Mayor here unfolded his scheme, of which the leading features were the opening of public workshops for the several branches of mechanical art, in which any tradesman wanting employment would be sure to get it, in his proper trade, — each shop to be managed under the direction of a committee appointed by the Mechanic Society; a general office for the reception of applications by those destitute of employment, as well as by those requiring workmen; a large workroom, annexed to the almshouse, in which women and children might be employed in labors suited to their strength, where food might be prepared for them at a cheap rate, and where the children might receive the advantage of some education in the school belonging to that establishment; a

system of regulations for the purchase of raw material, sale of manufactured goods, and prices of labor; and the furnishing of the necessary capital by the corporation of the city, for the due application of which, but not for inevitable loss, the committees should be responsible.

"This," continued the Mayor, "is a sketch of the plan which presented itself to my mind as one that would probably effect the objects I have detailed. Many parts of it may perhaps be changed for the better, and other valuable ideas suggested, in case you should think proper to appoint a committee to confer with me on the subject. A general establishment under the direction of the corporation would seem to present many advantages over the one now proposed. But, besides the difficulty of raising a fund sufficient for its support, it would have the disadvantage of creating an interest which might sometimes be supposed injurious to the mechanic who works only on his own small capital; whereas the being under the superintendence of the Mechanic Society could never give rise to any such prejudice. Having mentioned the coöperation of the common council of the city, I must not be understood as speaking their sentiments, or in any wise pledging them to countenance the plan. It has not yet been mentioned at the board, and will receive no further encouragement from them than on discussion its merits shall be found to warrant."*

* We have seen that Mr. Livingston had in Congress, some years before this period, made earnest but ineffectual efforts to meliorate a portion of the criminal laws of the United States. But the reflection which was to lead eventually to the preparation of an original, comprehensive, and complete system of penal legislation, first received impulse and shape from the perusal of those of Bentham's works which appeared, in the French of Dumont, in 1802. This fact he acknowledged in a letter to Bentham of August 10, 1829. Vide *Bentham's Works*, edited by Bowring, vol. xi. page 23. In a subsequent letter, which appears in the same collection, Livingston wrote to Bentham,—"Although strongly impressed with the defects of our actual system of penal law, yet the perusal of your works first gave method to my ideas, and taught me to

The response of the society was a respectful and elaborate refusal to entertain the plan. Circumstances soon occurred which prevented the author from seeking another method of bringing it before the people of his native State; and its gradual growth in his mind and under his hand to a complete proposed system, comprehending a reconstruction of the entire framework and details of criminal legislation, was reserved for a later period and another place.

Would the reader suppose that the man who performed from day to day these varied practical labors, and who pursued at the same time such researches and contemplations as are here indicated, could also find much of either leisure or inclination for domestic intercourse, society, or amusement? The capacity and taste of Livingston were sufficient for all these. He could temporarily lay aside the gravest cares and the deepest studies with a grace and a relish, in the very spirit of the Horatian recommendation, —

"Misce stultitiam consiliis brevem."

Among his intimate acquaintances he never let pass an opportunity for producing a pun; and if a good one did not come into his mind, an indifferent one would serve the purpose of his gleefulness and gayety. The late Honorable Charles J. Ingersoll, during the last month of his life, gave me from his own memory, after a lapse of sixty years, this anecdote. On a visit at New York during the period referred to, he escorted the celebrated Theodosia Burr to see a frigate then lying in the harbor, upon the invitation and in the company of the Mayor. On the way, the latter, in the liveliest manner, exclaimed

consider legislation as a science governed by certain principles applicable to all its different branches, instead of an occasional exercise of its powers, called forth only on particular occasions, without relation to or connection with each other." *Vide* page 51 of the same volume.

to the young lady, "Now, Theodosia, you must bring none of your sparks on board. They have a magazine there, and we should all be blown up." He seemed always ready for a hearty laugh, and was not fastidious about the quality of the wit which should provoke it. At his own table, or among his familiar friends, his gayety was perennial; and a stranger seeing him in these circumstances would have supposed that the usual topics of conversation common to the young and the old of both sexes were those in which he felt the most lively interest. He was himself fond of some kinds of amusement, and enjoyed sympathetically the amusements of all. One of his nieces, Mrs. L——, of Rhinebeck, has lately told me, what she remembers well, that during the same period, when she was about sixteen years of age and spending a winter with her uncle, she once said in his presence, while talking of the play which she had seen the evening before, "Oh, I wish I could go to the theatre every night." "Well, my dear," said the Mayor, "you shall, you shall." And he actually went with her to see every representation, then on each alternate night, for two or three weeks, until she voluntarily begged that the pleasure might be intermitted.

His daily official labors were despatched with astonishing facility, and he still found some leisure for reading general literature, including poems, and even romances, in which he delighted. In short, the capacity and the sympathy of this able, learned, philosophic, and busy man, seemed only confined to the region of human tastes and interests. Not Terence nor any other, with more truth, could say,—

"Homo sum; humani nihil a me alienum puto."

Such was the active but even tenor of Livingston's life, from the time when he undertook these offices until

the summer of 1803. New York has been visited several times by that fearful pestilence, the yellow-fever, — the rarity of the dispensation always heightening its terror, — and one of the most memorable of these occasions was in that year. The first appearance of the scourge was about the 20th of July, and its presence lasted till the end of October. This event elicited a display, on the part of the Mayor, in the regular discharge of his functions, of more lofty qualities than a lifetime of ordinary official duty could have called into exercise. The public alarm was great and universal. As a rule, all who could possibly leave the city for any place of safety hastened to do so. As usual, however, there were many instances of selfishness and cowardice on the one hand, and on the other many examples of heroic philanthropy. The reader will not need a minute picture of those dismal scenes of which the city was then the theatre, so like other often painted scenes of pestilence enacted elsewhere, — the hospitals, the streets, the shipping, the flights, the burials, — in order to comprehend the position of the Mayor, or to appreciate his conduct. He regarded himself bound, as by a sacred contract, to remain steadfastly at his post, and calmly face the public enemy, without the slightest attention to what might be the consequences upon himself.

He so remained, but did not limit his exertions to a frigid performance of his official duty. On the contrary, he kept a list of the houses in which there were any sick, and visited them all, as well as the hospitals, every day, ascertaining and supplying the indispensable needs of the poorest and most forsaken of the sufferers. He made every sick person in some sense his patient, and sought some share in the grief or joy of the families of victims or convalescents. He animated the zeal of his

colleagues and subordinates in the government, stimulated the fidelity of nurses, physicians, and priests, and even went about the city at night, to see for himself if the watchmen were thorough in their duty. In a word, it was the part of a Howard, in the person of a conscientious chief magistrate, that he enacted in this dreadfully real drama.

For some time, and until there was a marked abatement in the prevailing fatality of the epidemic, he enjoyed complete health. Then he was himself taken down by the contagion. But his good constitution, aided by a sanguine will and the particular care which his case received, secured him a rapid recovery after a rather violent but short crisis. He was now the object of extraordinary popular gratitude and regard. When his physicians called for Madeira to be administered to him, not a bottle of that or any other kind of wine was to be found in his cellar. He had himself prescribed every drop for others. As soon as the fact was known, the best wines were sent to his house from every direction. A crowd thronged the street near his door, to obtain the latest news of his condition; and young people vied with each other for the privilege of watching by his bed.

An ambitious man could hardly desire a better vantage than that which Livingston now seemed to occupy. He was but thirty-nine years of age; yet he had proved his great talents as an advocate, as a legislator, as an administrator of public affairs, and as a judge. His civic virtue had just been put to the hardest test, and found reliable. The dangers of the trial were past, and these high qualities were widely appreciated both by public men and by the people. Surely, nothing was here wanting to the appropriate description of a rising man.

So far, his course had been one of uniform prosperity and uninterrupted success. His happiness had been unclouded, except by the afflictions which have been mentioned and one other. His eldest son, Charles Edward, had died in November, 1802, at the age of twelve years. He was a youth of a feeble constitution, but of the sweetest disposition, and of a precocious native piety and strong sense. The father mourned him sincerely, but a long expectation of the bereavement materially softened its effects.

I have now to record the principal misfortune of Livingston's life, — a misfortune which, in fact, served to divide his life into two distinct careers, bringing that over which we have glanced to an abrupt close, and leading to another, destined, in its labors, achievements, and fame, to eclipse the first.

At that time, such moneys belonging to the United States as were collected by legal proceedings, instead of being paid directly to agents of the treasury, as is now done, were received by the attorneys, and accounted for to the government in the periodical settlement of their accounts for services. The principal sums so received by the office at New York, while it was held by Livingston, were on the collection of custom-house bonds, small in amounts but sometimes large in number, and usually paid, if at all, without litigation. While he had so many irons in the fire, he could pay but little attention to this part of the business, and he had no taste for personally managing such affairs. From a certain necessity, therefore, as well as from inclination, he left these matters for the most part in the hands of his subordinates. But this was somewhat too laxly done,—a kind of error to which more than to any other his large and easy nature exposed him. The result which the more

exact attention of an inferior man would have prevented, happened. His too easy confidence was abused; and when, early in August, while the yellow-fever was at its height in the city, his attention was called by the government to the state of his accounts, it was apparent that, without funds in his possession, he was indebted to the United States in a considerable amount.

The principal act, the act of another, which placed him in this unlooked-for position, was a most cruel injury. His proper income was large, and although his habit in both spending and giving was free, and perhaps careless, his personal tastes were all simple, and none of them expensive. Though he was obliged to entertain much, as we have seen, it was done without display or profusion.

Still, it is plain, I think, that, if he had possessed common skill in the management of pecuniary affairs, and had exercised ordinary care in watching the funds for which he was responsible, this calamity might have been avoided. Here was the single defect in his capacity, — the one conspicuous weakness of his character. His versatility, which was sufficient for almost any other business, public or private, was inadequate to book-keeping and finance. He did not love money, and could not comprehend its real value as most men readily do, nor interest himself in the process of counting or of slowly accumulating it. The whole following course of this narrative will, I believe, verify these observations, and show that one who, by a happy union of the sterner and the milder virtues, came nearer to such perfection of character as is possible to our nature than is often permitted, was yet obliged to suffer a rigorous and enduring penalty for one failing from which even the sordid are very commonly exempt.

Mr. Livingston seldom in after-life made any allusion to the particulars of this unhappy affair. The most explicit statement that, as far as I can find, ever came from him on the subject, was in a pamphlet which, five years later, he addressed to the people of the United States, in the course of a public controversy with the President, Mr. Jefferson, — of which an account will be given hereafter in these pages, — a controversy wherein he was foiled in an endeavor to realize speedily the means of paying his debt. The statement to which I refer occurs in a passage explanatory of his reasons for addressing the public, and is as follows: —

"It is time that I should speak. Silence now would be cruelty to my children, injustice to my creditors, treachery to my fame. The consciousness of a serious imprudence, which created the debt I owe the public, I confess it with humility and regret, has rendered me perhaps too desirous of avoiding public observation, — an imprudence which, if nothing can excuse, may at least be accounted for by the confidence I placed in an agent, who received and appropriated a very large proportion of the sum, and the moral certainty I had of being able to answer any call for the residue whenever it should be made. Perhaps, too, it may be atoned for in some degree by the mortification of exile, by my constant and laborious exertions to satisfy the claims of justice, by the keen disappointment attending this deadly blow to the hopes I had encouraged of pouring into the public treasury the fruits of my labor, and above all by the humiliation of this public avowal."

The agent here spoken of was a confidential clerk, a Frenchman by birth, whose name I could give if it would serve any useful purpose. He is said to have devoted a considerable portion of the stolen money to riotous living. I have conversed with those who remembered his

person distinctly, as well as the notorious circumstance of his delinquency. Of his history or fate I could learn nothing further.

In this unexpected trouble the conduct of Livingston was prompt, and in all respects characteristic. Being satisfied of his liability for an amount which he could not then discharge, he wasted no time in attempts to parry the disaster, or to divide the responsibility with the real but irresponsible delinquent. Without waiting even for an adjustment of his accounts, he voluntarily confessed judgment in favor of the United States for $100,000, in order to cover the amount which the adjustment should show to be the real balance against him,—afterwards fixed at $43,666.21. At the same time, he conveyed all his property to a trustee for sale, and an application of the proceeds to the payment of his debt. The property conveyed consisted of real estate, which, though not very marketable, he valued at a sum sufficient for the security of the government. And he immediately resigned both his offices.

This was done while the pestilence was raging in the city. The resignation of the mayoralty was accompanied by an offer to continue to discharge the duties of the office until the subsidence of the epidemic. The Governor sent him the following note, tacitly postponing to act upon his resignation, and accepting his offer: —

"To the Hon. EDWARD LIVINGSTON, Esq.,
Mayor of the City of New York.

"*Albany*, 29th August, 1803.

"DEAR SIR: I have the honor of receiving your letter of the 19th. I sincerely regret, as well from considerations of a personal as of a public nature, the cause which has induced you to offer a resignation of the highly impor-

tant office you hold, and which you are so eminently qualified to fill. My absence from home has prevented me from thanking you at an earlier day for your obliging favor of the 19th inst.

"I am, with great esteem and respect,

"Your most obedient servant,

"GEORGE CLINTON."

A different course, including his retention of the office of Mayor, would seem to have been quite practicable. Two months intervened between the offer of his resignation and its acceptance by the Governor and Council of Appointment, when finally De Witt Clinton was selected to succeed him. Efforts were made during the interval by his friends, including some members of the Council, to persuade him to reconsider his determination. And when it was known that his mind was fixed in this, he received from all sides a shower of expressions, public and private, of regret and sympathy which must have proved truly soothing. The parting address which he received from the common council of the city contains such unusual traces of sincerity and real feeling that I transcribe it here as follows: —

"Sir: We should merit the reproaches of our fellow-citizens, and fail in duty to ourselves, if we should pass in silence the affecting moment which terminates your administration as first magistrate of this city; we unite with the utmost cordiality in that applause which the public voice hath so justly bestowed on your conduct in execution of the office of mayor, on the learning and discernment displayed in your judicial decisions, your vigilance, your activity, and zeal as an executive magistrate.

"Having been connected with you in the discharge of

the greater part of those duties, we cannot too warmly acknowledge the uniform politeness and courtesy of your manners. Inflexible in the preservation of order and in the execution of the laws, yet unbiassed by personal feeling or party prejudice, you have invariably exhibited dignity and firmness tempered by complacency; even when differing from you in opinion, we have always had occasion to admire your rigid impartiality and the independence of your sentiments.

"This assemblage of qualities so rarely combined would suffice to command our highest respect and esteem; but it was reserved for a period of desolating calamity to display the extent of your philanthropy, and your disinterested devotion to the public welfare. During the scenes of affliction and dismay with which it hath lately pleased God to visit our city, we beheld with admiration, and with the most grateful emotions, the unremitted zeal with which you sought out and relieved distress, and the alacrity with which you sacrificed your personal safety and comfort to that of the suffering poor; regardless of danger and toil, and disdaining all cold examination of the mere limits of official duty, when humanity called, you obeyed only the impulse of your generous heart. Thus, Sir, you have erected in the breasts of the virtuous a monument of gratitude which calumny cannot sully nor time deface.

"The anxiety and alarm which pervaded all ranks of citizens during the dangerous illness which you contracted in administering to them relief, pronounced, in language which flatterers cannot imitate nor envy distort, the ardor and sincerity of their affection; and we join with them in fervent acknowledgments to the supreme and beneficent Disposer of events, who hath graciously spared your life and restored you to health.

"We must indeed be destitute of the feelings of men,

if we could witness, without regret, the period which dissolves a connection endeared by so many ties. We look in vain for consolation to the future. Yet you have so marked the path of duty that inferior abilities, if guided by intentions as pure, may follow in the steps traced by your wisdom, and for a time preserve the impulse which your energy hath produced. While we cherish this hope, the memory of your example will direct our conduct and animate our zeal in the discharge of our respective functions.

"Be assured, Sir, that our attachment to your person and gratitude for your services will endure with the recollection of your virtues; and that you bear with you our lasting regret and esteem, and our prayers for your prosperity and happiness.

"JOHN OOTHOUT,
"PHILIP BRASHER,
"JOSHUA BARKER,
"Committee of the Common Council."

But, whatever comfort he might find in the homage of friends or in the popular sympathy, that consideration could not for a moment relieve him from a consciousness of the new burden which was destined to continue, contrary to his sanguine hopes, alternately to stimulate his exertions, to oppress his spirits, and to perfect his fortitude for many years; nor did it for a moment divert his mind from a plan for the future, which he deliberately but swiftly formed.

In April of the same year, 1803, Louisiana, or the province of Orleans, comprising the present States of Louisiana, Arkansas, Missouri, Iowa, Minnesota, (except the corner lying northeast of the Mississippi,) Nebraska, and Kansas, and the Indian Territory, was purchased

by the United States from France. Chancellor Livingston, the revered elder brother of Edward, had been from the beginning of Jefferson's administration the Minister Plenipotentiary of our government to France; and the success of this negotiation, at the particular time when it was accomplished, was the result of his diplomacy, which had been bold, skilful, and indefatigable. Mr. Monroe arrived in France with extraordinary powers on this subject, but a few days before the treaty was concluded, and, during those days, assisted in that part of the negotiation which related to fixing the price of the country to be ceded, — Napoleon being represented by Marbois, afterwards the candid historian of the treaty; but the whole merit of successfully bringing the matter to this point, at the right moment, was that of the minister. From the latter Edward had received very early knowledge of the subject, strongly exciting his interest in it. In June, Lafayette had written to him, "Bernadotte is returned from Rochelle, where he was to embark, and his mission I consider as happily ended by the blessed arrangement for Louisiana. With all my heart I rejoice with you on this grand negotiation, which, both as a citizen and a brother, must be not less pleasing to you than it is to me." *

* Bernadotte had been charged by Napoleon with an errand to our government, and Lafayette had written to bespeak a good reception for him from Livingston. Between the last two there was a regular interchange of news of every event of importance to either. A few months earlier than the date of the above-mentioned letter, while Lafayette was confined with a fractured limb, Madame Lafayette wrote the following to Livingston: —

"*Paris*, 10 ventose, 1er Mars, 1803.

"La correspondance de Monsieur votre frère et les papiers publics vous auront appris, Monsieur, le malheureux accident que M. de Lafayette a éprouvé. Je suis bien sure que votre amitié y aura pris part, et que ce sentiment est partagé par toute votre excellente famille. Nous avons eu la douleur de voir ce cher malade livré à de cruelles souffrances; il doit encore subir six semaines d'une gêne douleureuse, et presqu' insupportable, — mais grâces à l'invention d'une nouvelle machine cette fracture du col du fémur qu'on regardait autrefois comme incurable, sera complètement

When the Mayor received this letter, he little dreamed that his own interest in the "blessed arrangement" would soon be something more than that of "a citizen and a brother." The blow destructive of his fortune and threatening his complete ruin shortly afterwards fell. Then the prospect suddenly opening to New Orleans as a commercial city, and to Louisiana as a mother of great States, suggested to him the thought that the new territory — where the French language, with which he was familiar, was the one chiefly spoken, and where the civil law, whose principles he had mastered and admired, was the basis of jurisprudence — might be his best field for the purpose with which he burned, of quickly regaining his independence. He felt sure that he could in time effect his deliverance by professional exertions at New York; but, there the process would be too slow for his patience, while there existed a reasonable chance of a more speedy rescue elsewhere.

He now had need of all his philosophy. He was considerably past the period of life when usually, if ever, a man undertakes for the first time such an adventure,

guérie. Son courage et l'égalité de sa constance au milieu de ces différens supplices ont soutenu, et soutiennent encore nos forces, et sont regardés par les gens de l'art comme un moyen de guérison. C'est au moins un motif d'espérance que sa santé ne restera pas alterée des suites de ses souffrances. C'est dans cette situation que M. de Lafayette vient d'apprendre vos bienveillantes intentions à son égard et les nouvelles obligations que vous voulez bien ajouter à celles que nous vous avions déjà. Il en est pénétré de reconnaissance, et comme la nécessité de rester couché sur le dos, sans aucun mouvement, l'empêche de pouvoir écrire, il me charge de vous exprimer tous les sentimens de sa gratitude et ceux de sa tendre amitié. Toute sa famille s'y unit bien cordialement. Agréez en particulier l'hommage de l'attachement que mon fils vous a voué; il m'est doux de vous répéter ici combien nous fûmes touchés pendant notre captivité des honorables et sensibles témoignages d'intérêt que vous lui donnâtes, et combien nous sentons le prix d'un ami tel que vous. Je ne vous parle pas de l'aimable partie de votre famille qui est ici, parceque vous recevrez de leurs nouvelles par la même occasion, et je me borne à vous offrir l'expression de l'attachement et de la haute considération avec lesquels j'ai l'honneur d'être votre très humble et obéissante servante,

"NOAILLES LAFAYETTE."

and to this one all his habits and associations, his tastes, and his affections, opposed themselves. It was to quit the scene of his long prosperity and happiness, his family, his friends, and the fresh graves of his wife and eldest son; while the comfort and safety of his two remaining children, now nine and five years old, the objects of his tenderest feelings, would require them to be left behind for years. Nevertheless, he resolved upon the enterprise, and, having made the resolution, did not lag in its execution. He at once arranged his affairs, procured all practicable means of extensive introduction to Louisianians, and leaving his children, from whom he had never yet been separated, in the care of his brother, John R. Livingston, whose wife was Eliza McEvers, the sister of their mother; he embarked, during the last week of December, 1803, within two months after retiring from the mayoralty, as a passenger on board a vessel bound to New Orleans. All the money and pecuniary resources which he had reserved out of his property and now carried, consisted of about one hundred dollars in gold, and a letter of credit for one thousand dollars more.

CHAPTER VII.

EMIGRATION TO NEW ORLEANS.

Voyage, and Arrival at New Orleans — The City and its Inhabitants in 1804 — Mr. Livingston's Exertions and Success at the Bar — His Homesickness — His Professional Character and Public Spirit — His Code of Procedure for Louisiana — A Confusion of Tongues in the Courts — Eloquence of Livingston before a Masonic Lodge — His Method as an Advocate — His Supremacy at the Bar — Note from Mazureau — Mr. Livingston's Social Traits — His Taste for Mechanical Invention — His Second Marriage — Prospects of Pecuniary Success — Obstacles — Calumnious Attack upon Mr. Livingston by General Wilkinson.

THERE is a brief and fragmentary journal of this voyage still existing, in Mr. Livingston's handwriting, from the reading of which a stranger might infer that the distinctive faculties and tastes of the writer were observant rather than reflective, so lively an interest it shows in all he saw or could glean from the conversation of the taciturn master of the vessel. In this simple and natural record there is not a trace of sadness or regret, except the trivial disappointment which he felt on being prevented by the state of the winds from landing at the island of Abaco, before passing which he had enjoyed what he calls "a delightful anticipation of the pleasure of running over its surface, examining the trees, plants, and animals of a new climate, getting rid of the confinement of a cabin, and enjoying for a few hours the pleasure of fishing and shooting, both of which we are promised in great perfection."

The ship reached New Orleans, after a passage of six and a half weeks, on the 7th of February, 1804. The city then occupied the small rectangular space bounded

by the river, and by Canal, Rampart, and Esplanade Streets, with a fort, built by the Spanish government, at each of the four principal corners.

The population of the city was, about the same time, ascertained to be 8056, including 1335 free persons of color and 2773 slaves, — a number that was soon doubled and trebled. The citizens were, for the most part, Frenchmen and Spaniards, who had not seen France or Spain. These Creoles had some uniform physical traits, — the growth of their adopted climate, — distinguishing them from their ancestral races. They had more beauty and less hardiness than their European cousins; and analogous to and as distinctly marked as these outward peculiarities were certain of their qualities of mind and character. They were social, gay, and refined, but not ambitious, industrious, or enterprising. Those of French origin were the preponderant class, and French was the prevailing language. A few were educated to write and pronounce with a reasonable conformity to the Academy's standard; but that high authority was not in general well observed by these remote provincials, and nowhere else on earth could the Parisian ear take in sounds so shocking as those which formed the *patois* of the negroes.

The Creoles had taste for the art of good and elegant living, but had never been stirred, like the peoples of most countries, by the high emotions of patriotism. They had quietly submitted to be bought and sold and ceded, as a country, at the convenience or pleasure of their foreign masters. They had grumbled a little, but had not resisted, on being handed over to Spain; and when the American flag was hoisted, in token of the transfer of Louisiana to the United States, the new banner was greeted with huzzas only by older citizens of

the great republic who were present, while the Creoles looked on with an air of well-bred indifference. This was but a dozen years before the same people, aided by the heterogeneous numbers in the mean time added to them, defended their homes and the stars and stripes so sternly under Jackson. A rapid Americanization! The Anglo-Saxon invader on that occasion met with an Anglo-Saxon resistance from a community made up of dissimilar races, speaking different languages, but all leavened with the spirit and courage of its newest comers.

Livingston wasted no time, before taking the most direct and energetic steps in order to realize the purpose of his emigration. He made immediate use of his introductions, his reputation, and his address, received a prompt and hearty welcome from the community, and occupied at once a foremost position at the bar of his adopted city. He appeared as counsel in six causes in April; and at the term of the Governor's Court, commencing on the 9th of May, in twenty-nine cases of very miscellaneous character.

He now devoted himself wholly to business, and seldom left his chambers before evening, except to go into court. As a single object had taken him to Louisiana, that object alone kept him there and directed all his energy. In the evening he walked, or visited the families of his new acquaintances. To his sister, Mrs. Garretson, he wrote, May 27th: —

"My profession and other circumstances have given me a very extensive acquaintance in the province; and the impressions I have received are very favorable to the character of the inhabitants. They are, in general, hospitable, honest, and polite, without much education, but with excellent natural abilities, and, in short, people with whom a man who had nothing to regret, might pass

his life as happily as can be expected in any part of this uncertain world. . . . . It now seems decided that I must be separated from all the friends of my early life for an uncertain length of time; from some of them most probably forever. This is an idea I did not wish to entertain; but circumstances have forced me to contemplate it, until I have become enabled to regard it, if not with composure and tranquillity, at least with the resignation arising from necessity. The labors of a great portion, if not the whole of my life are now pledged to others, for I much fear that the losses on selling real estate will leave a large deficiency in the fund appropriated for my debts. I must make this up, and as I have a better prospect of effecting it here than at New York, I am in justice bound to remain. The separation from my children is the hardest trial; but I cannot, without the greatest injustice to Julia, take her from the truly maternal protector she has found; and I must try the effects of the summer climate before I will indulge myself with the society of my little Lewis, whose education I can myself direct."

The separation from his children, which could not be prudently avoided, was, indeed, the most trying circumstance of his situation. Julia, a child of rare beauty and most interesting mind and character, could only converse with her father at a distance of two thousand miles, and fortune removed the "little Lewis" to more than double that long distance. His aunt, the wife of General Armstrong, on the appointment of the latter as Minister to France in 1804, took the boy with them to Paris, where he remained several years. The father wrote briefly but sadly of his "poor boy's departure," and declared that one of the worst evils of his exile was that he could not see the daily unfolding of a mind like Julia's.

He might have been sure of receiving a larger income in ready money, by indulging his inclination and remaining at New York. The advantage which he, with good reason, expected to realize at New Orleans, was a facility of acquiring, in exchange for his services and in lieu of fees, property of greater prospective than present value, and thus investing his earnings in a mode assuring their rapid accumulation. In this he was not mistaken. Ready money in large sums was not then ordinarily to be had at New Orleans for the services of an advocate, but liberal payments in lands were willingly made. In this way, he soon acquired the title to real estate which promised well to become a grand fortune within a few years. One of the earliest of these acquisitions was a property, on the shore of the Mississippi, adjacent to the city, called the Batture Ste. Marie, which alone — but for an unlooked-for and most untoward, as well as unjust and illegal opposition, which he was destined to meet at the hands of his former friend, the President of the United States, whose election, when trembling in the balance, as we have seen, his vote and steady conduct had helped to decide, — an opposition yielded in aid of local jealousies and temporary prejudice — would have made real, at an early day, his dream of independence. This opposition gave rise to a long and bitter controversy, to be hereafter detailed, — a controversy most interesting in itself, and one which brought into full play the genius and the character of Livingston.

One would hardly expect a man so circumstanced, having so definite an object before him, and hoping to gain it speedily by professional exertions alone, and especially a man so qualified to profit by accurate and profound knowledge of all the intricacies of the system of English legal practice, to give himself much concern

to exclude that system from Louisiana, or in favor of any project for a radical change and simplification of proceedings at law, to enure only to the advantage of the community which he intended as soon as should be possible to leave. But Livingston was one of those lawyers — a class never anywhere numerous enough, I am afraid —, who feel that they are a responsible part of the court in which they practise, who believe their vocation to be to assist in the administration of justice, and who devote their exertions primarily to that duty, and then to the interests of their clients.

In the November following his arrival at New Orleans he evinced his habitual subordination of private interest to public good in a memorable manner. The recent cession of Louisiana, which had brought the territory under the Constitution of the United States, gave rise to a grave question in the courts, whether the clause in that instrument providing for trial by jury, and requiring the reëxamination, in the courts of the United States, of any fact so tried to be according to the rules of the common law, had not, at one stroke, imposed upon Louisiana the whole system of English legal practice, unknown and repugnant as it was to a vast majority of her inhabitants. If this question had been decided in the affirmative, of course the lawyers who had emigrated thither from common-law States would have brought their peculiar knowledge to an excellent market; and not one of them was equally qualified with Livingston to make much of such an advantage. The bar arrayed itself into two parties upon this question, and a cause was made up expressly to obtain a full discussion and judicial settlement of the point. Mr. Livingston was selected as the leading champion of those who contended, that, although the Federal Constitution had brought in the trial by jury,

and made obligatory the observance of common-law rules in appellate proceedings in the Federal courts, yet that the courts and people of Louisiana were at liberty, in the main part of legal practice, to follow the ways to which they were accustomed, and even to adopt, if they chose, a system which should be to them more intelligible still. I have not found anything that could be called a report of the argument he delivered on this occasion; but it produced a profound impression, and was long remembered as a masterpiece of forensic reasoning and eloquence. The decision of the court was in accordance with the ground taken by Livingston. Following up this success, he recommended a simplification of the existing practice, which was a medley of the civil and Spanish law. The suggestion was accepted, and the task of drawing up a new code of procedure was committed to his hands. He performed the work promptly; and when he had been in Louisiana but little above a year, the legislature adopted an entire system of practice proposed and framed by him. It is embodied in an act, passed on the 10th of April, 1805, consisting of twenty-two sections, and extending only to twenty-five printed pages. Under it, all suits were commenced by petition, addressed to the court and filed with the clerk, stating the names and residence of the parties, the cause of action, with places and dates, without prolixity, scandal, or impertinence, and concluding with a prayer for relief. The defendant was brought into court by citation, issued by the clerk and served by the sheriff. On proof of service, and of failure to answer, judgment was entered in favor of the plaintiff. The defendant appearing and answering, either party could demand a jury. Either plaintiff or defendant might propose written interrogatories to the other, which the latter was bound to answer. The whole

machinery of attachments, holding to bail, execution, review of trials, amendments, compulsory attendance of witnesses and their examination, fines, references of intricate accounts, and the several writs known to the common law, were all provided for in the act.

This was certainly the shortest and simplest code of procedure which had existed since very primitive days. The professional reader will discern, in the above outline of it, a clear resemblance between its leading features and those of some much later and more elaborate systems of practice. I have been assured by an aged and eminent lawyer and judge from Louisiana, that its practical working was better than that of any of the systems with which he had been acquainted.*

The administration of justice in Louisiana, at this

* A quarter of a century later, Mr. Livingston, in a letter to Jeremy Bentham, gave the following reminiscences of this short code of procedure: —

"A simple system was substituted, based upon the plan of requiring each party to state, in intelligible language, the cause of complaint and the grounds of defence. I comprised it in a single law of a few pages; and although, from its novelty, many questions may be naturally supposed to arise under it, before the court and suitors become accustomed to its provisions, yet our books of reports, from 1808 to 1823, contain fewer cases depending on disputed points of practice than occurred in a single year, 1803, in New York, where they proceed according to the English law, which has been in a train of settlements by adjudication so many hundred years. An anecdote to exemplify this may not be unacceptable to you. When I was pursuing my profession at New Orleans, a young gentleman from one of the common-law States came there. He had been admitted to the bar in his own State, and was, of course, entitled to admission in ours, if found by examination sufficiently versed in our laws; he had studied them, and was ready to undergo the examination, but expressed to me his regret that a long time must elapse before he could make himself master of the routine of practice, with which, in our system, he was entirely unacquainted, and, asking to be admitted into my office until that could be effected, requested me, with much solicitude, to tell in what period I thought he might, with great diligence, be enabled to understand the rules of practice, so difficult to be acquired according to the common law. I answered that it was not very easy to calculate to an hour, but as he was engaged to dine with me the next day, at four, I thought I could initiate him in all the mysteries of the practice before we sat down to dinner; nor was there any exaggeration in the statement. What will your articled clerks, tied for seven years to an attorney's desk, say to this?" — *Works of Bentham*, edited by Bowring, vol. xi. page 52.

period, was attended with some of the inconveniences which interrupted the business at Babel. The records of the courts were kept in the English language. The process and pleadings were written and the proceedings conducted primarily in English. But it was often necessary, and it was the constant practice, to translate the pleadings and afterwards all the evidence into French, Spanish, or German, and sometimes into all these, in order to reach the comprehension of the whole jury. A sworn interpreter was attached to the court, competent to speak all these languages. No advocate often attempted to address a jury in any but his mother tongue. So it was the common custom to employ at least two advocates on the same side, who followed each other, each in his native language.

Mr. Livingston understood all these languages perfectly when spoken by others, and spoke them himself, — the French fluently and clearly, Spanish and German not so easily or so well. I have conversed with a gentleman who distinctly remembers hearing him argue more than one cause, but not many, in French. These were simple, ordinary, and perhaps unimportant cases. He would not, as my informant believes, have made the attempt in any other.

Mr. Livingston was always a zealous member of the fraternity of Masons. He had held a high office in the order at New York, and soon after becoming a citizen of New Orleans, was chosen to preside over the Louisiana Lodge, then newly organized. At its first meeting, he, in an eloquent address, consecrated its hall, as a Temple to Harmony and Virtue. He referred to the past history and present objects of the Masonic order, and defended its principles, and even its mysteries, as furnishing some antidote against the evils of partisan rage and personal

discord. The original notes from which he spoke on this occasion are now lying before me. I quote from them the following passage, in order to relate a singular and immediate effect which its delivery produced: —

"My brethren, have you searched your hearts? Do you find there no lurking animosity against a brother? Have you had the felicity never to have cherished, or are you so happy as to have banished all envy at his prosperity, all malicious joy at his misfortunes? If you find this is the result of your scrutiny, enter with confidence the sanctuary of union. But if the examination discovers either rankling jealousy or hatred long concealed, or even unkindness or offensive pride, I entreat you, defile not the altar of Friendship with your unhallowed offering; but, in the language of Scripture, 'Go, be reconciled to thy brother, and then offer thy gift.'"

When the orator had feelingly and impressively pronounced the last of these sentences, he was interrupted by a movement of two men in the audience immediately before him, who at that instant, with mutual sobs, rushed into each other's arms. They were veritable brothers, who, several years before, had become embroiled, and had not spoken together since. "No triumph at the bar or in the tribune," said Livingston afterwards, "could be worth the satisfaction I felt at that moment."

Mr. Livingston's best successes at the bar were accomplished by hard and direct blows. The truth could scarcely escape his search, and his method of making it appear plain to others was simple and usually concise. A contemporary writer said that he was "as lucid as daylight." A few propositions which, ordinarily, no one was prepared to gainsay, would lead straight to the conclusion he sought to enforce. This method in advocacy, coupled with a strong conviction of being in the right, gave him

at times great power. But the effrontery of deliberate sophistry he did not possess; and if in the progress of a trial he discovered that he was clearly on the wrong side, he was thenceforth sometimes positively feeble. To this I have the testimony of those who have witnessed the change which came over him on such occasions.

But there was no question about his early supremacy at the bar of New Orleans. The following tribute to his superiority — rather too warm to be literally translated into English — he received, on the afternoon of the day upon which he had spoken against the sweeping introduction of common-law practice into Louisiana, as an ordinary business communication from one who was perhaps better qualified than any other man there for a professional rivalship with him: —

" 13 Novembre, 1804.

" MONSIEUR: M. Alexandre doit venir me prendre, ce soir, pour nous réunir, chez vous, sur les 7 heures, afin de déterminer le parti que nous avons à prendre relativement à la réponse à faire dans l'action intentée par St. Julien contre Declouet, Duralde, et autres.

" Serez vous disposé à cette conférence? Ayez la bonté de me le faire dire.

" Jusques là permettez moi que je vous paie le tribut de félicitations que mérite la grande habilité avec laquelle vous avez traité, ce matin, la grande question de common law.

" Vous y avez déployé une éloquence rare; j'avoue que je n'ai jamais été plus ému que par les images frappantes que vous avez faites de tous les inconvéniens qui résulteraient de cette grande innovation, si elle avait lieu.

" Vous avez été profond depuis le commencement jusqu'à la fin de votre argument ou, pour mieux dire, de votre

discours ; mais vous avez été grand, sublime, admirable, étonnant, dans votre péroraison.

" J'en suis encore plein de la plus vive et de la plus sainte émotion.

" Heureux le peuple dont les intérêts seront défendus par un homme tel que vous !

"J'aurais désiré, et je désirerais que tous les Louisiannais eussent été présents à cette importante décision ; ils eussent été bien ingrats, s'ils n'eussent pas partagé tous les sentimens d'estime et de reconnaissance que vous professe " l'humble

" E. MAZUREAU."

Mazureau was the leading counsel against Livingston in a severe and important litigation soon to be referred to, —a litigation destined to exert a marked and permanent influence on the career of the latter.

It is said that there were several eminent lawyers of the city who did not cordially enjoy Livingston's acknowledged superiority, and who would have been glad to have him out of their way. It is certain that he encountered very zealous and determined professional opposition in his endeavor to attain sudden fortune. But his temper was so mild and so genial that it was impossible for any one to have a personal dispute with him growing out of professional intercourse. Even those to whom was ascribed the greatest jealousy of his position, considered his presence indispensable at their social reunions. There he was always the soul of gayety and good-humor. His light jokes, stories, and puns were inexhaustible, and were given with peculiar spirit and dramatic effect. He was accustomed to act out the parts of the persons of his anecdotes, rising and illustrating the matter, with glee of a contagious sort. There

was no satire in his conversation, no sharpness in his wit; the charm of his society was in a whole-souled, laughing humor, a perfect freedom from the airs of offensive egotism, an absolute amiability. Judge Carleton, in giving the writer, after the lapse of half a century, his personal reminiscences of the occasions just mentioned, chuckled over the memory of Livingston's pleasantries. On being requested to call to mind some samples of the anecdotes referred to, he said that nothing could be more volatile than the substance of these anecdotes. The manner of telling them was the main thing about them. He could remember but three. One was that of Livingston's first lesson in eating pork at Esopus; another was a lively description of the process of making sausages—which he called rollichers—by the farmers of Dutchess County; and the third was a story running as follows: A traveller stopped at an inn, near Rhinebeck, early in the morning. The landlady, with her ladle, was salting some butter which had just been churned. She was a snuff-taker, and a quantity of the dust had settled at the tip of her nose, threatening to drop into the butter. She inquired of the guest, "Do you stay to breakfast?" "Madam," he replied, "as it may fall out."

Mr. Livingston always took much interest in mechanical inventions, and, even when most pressed by professional duties or personal cares, found some leisure to study the principles of mechanics, with a view to discovery and improvement. Often, side by side with the Pandects, and among his bundles of papers, one might see some small machine made for the purpose of illustrating a novel idea. A carpenter who lived near him in New Orleans, and with whom he maintained the most friendly relations, usually had in hand some model under his direction. "It is singular," this man used to say,

"that a lawyer should understand my trade so well as Mr. Livingston does; I know nothing in the world of his."

An ordinary acquaintance would not have discerned that Livingston, at this period, was otherwise than contented in his new home. But all his occupation and all his prospects of early success could not repress his inward anxiety to return to his family and native State. He counted the three or four years which he believed that he probably must remain absent from both, and sometimes shuddered to think of the possibility that the time might be considerably, perhaps indefinitely extended. At this period he endured, in fact, all the sorrows of an uncertain though voluntary exile.

But for this homesickness he presently found a solace in his acquaintance and marriage, on the 3d of June, 1805, with Madame Louise Moreau de Lassy, the young widow of a gentleman from Jamaica. The previous history of this lady — with whom all the remainder of his life was to be passed in entire and mutual devotion — was eventful and interesting. Her maiden name was Davezac de Castera. Of her family I have seen an account from the pen of M. Armand D'Avezac,* one of her relations, still living in Paris. This account shows the lineage to have been long and honorable. Mrs. Livingston's more immediate ancestors had emigrated from France to St. Domingo, where they possessed much wealth and influence before the revolution in that island. In that bloody affair, her father, two brothers, and the

* The correct and original orthography of the name, the apostrophe being disused only by the members of the family in America. M. Armand D'Avezac is an eminent geographer, author of several works of merit, and member of many scientific societies in various parts of the world. For a notice upon him and his writings *vide* (under the title "Avezac-Macaya, Marie-Armand-Pascal D'") *Dictionnaire Universel des Contemporains*, par Vapereau, Seconde Édition, page 77.

aged grandmother met their fate, while her mother, herself, a widow at the age of seventeen, her brother Auguste, afterwards Major Davezac, and her infant sister, who subsequently became the wife of Judge Carleton, of Louisiana, narrowly escaped massacre, reached the United States by different vessels, and were afterwards reunited at New Orleans. From affluence they were reduced to poverty. It was in these circumstances that the acquaintance between her and Mr. Livingston was formed, and their alliance contracted. It is said that at this period her beauty was extraordinary. Slender, delicate, and wonderfully graceful, she possessed a brilliant intellect and an uncommon spirit. We shall hereafter have occasion to see that she had all the qualities requisite to appreciate, to stimulate, and in a great degree to guide such a man as Livingston.

Yet he continued to chafe under the necessity of prolonging the absence from his children and his native State. On the 10th of August, two months after his marriage, he wrote to his sister, Mrs. Tillotson,—"I have now, indeed, again a home, and a wife who gives it all the charms that talents, good temper, and affection can afford; but that home is situated at a distance from my family, and in a climate to which I cannot, without imprudence, bring my children."

From his first appearance in the courts of Louisiana he had stood among the foremost members of the bar; he was now the first lawyer among the foremost there. His fireside was a happy one; and to outward appearance all circumstances concurred to reconcile him to a permanent residence where he was.

Yet in his heart, as we have just seen, he sighed for New York and for his old associations; and everything seemed to favor the early accomplishment of his wishes. His income was increasing yearly, and he had acquired,

besides the Batture, several valuable pieces of real estate, from which he had large hopes of soon realizing his main object. Some of these acquisitions he had already disposed of advantageously, and one of them, an extensive tract of land, he had cleared from all incumbrances, expecting for it an early market for a sum sufficient to enable him to pay his debt to the United States in full, leaving him possessed of still other property, enough for the foundation of a competence, if not a fortune. All within three years from his first landing, a stranger, in Louisiana.

But obstacles and dangers were destined now to beset him, and to postpone the fulfilment of his plan for a period which even he would not then have been able to contemplate without discouragement and dismay.

In the first place, he narrowly escaped a ruinous, if not fatal blow, from the hands of General James Wilkinson, Commander-in-Chief of the army of the United States. The latter had been on terms of intimacy with him during the first months of his residence at New Orleans, and then leaving for New York and Washington, had thence written to him letters expressing the highest admiration and warmest regard. Returning, he reached New Orleans in November, 1806. Mr. Livingston called upon him on the day of his arrival. The visit was returned, and the General supped at the house of his friend. During that evening, the latter mentioned casually to his guest that an order of Aaron Burr for money had been presented to him by Dr. Bollman, a short time before, to his surprise, as he could not conjecture how Bollman, whose circumstances he had understood were narrow and embarrassed, should have such a sum due to him from Burr. The fact thus mentioned seemed to make no impression on the mind of the

General, who continued to treat Mr. Livingston in a cordial manner, both then and at several visits which afterwards passed between them.

This was just after Wilkinson, having encouraged the development of Burr's mysterious scheme, deeply soiling his own hands with it, as it would seem, had concluded to betray the scheme and its author. He had lately communicated his knowledge and suspicions to the President of the United States, from whom he was now receiving orders of a plenary kind, justifying him in vigorous discretionary measures for stifling the dreaded conspiracy and bringing to punishment all who should be found among the conspirators.

His first step, at New Orleans, was the military arrest and removal of Dr. Bollman and two other persons, — a proceeding which, as soon as it became known, startled and agitated the community. The indignation of a portion of the people, and particularly of members of the bar, was great. Mr. Livingston having but a very slight acquaintance with Bollman, and none at all with the other persons arrested, though he shared strongly in the general feeling of the lawyers on the subject, did not feel called upon to take any steps for the release of the prisoners. But a younger member of the profession, Mr. Alexander, prepared an affidavit of the fact of the arrest, and applied to one of the judges for the allowance of a writ of *habeas corpus*. The judge refused to grant it then, but directed Mr. Alexander to make the motion in open court. The latter thereupon applied to Mr. Livingston, to appear with and assist him in presenting the motion. He complied with the request, and the writ was allowed by the court. On the return day of the writ, a large audience was assembled in court, when General Wilkinson declared, in writing and in an oral speech,

that he had arrested Dr. Bollman on a charge of misprision of treason against the United States, and had taken measures to secure his safe delivery to the President at Washington; "that he had taken this step for the national safety, then menaced to its base by a lawless band of traitors associated under Aaron Burr, whose accomplices were extended from New York to New Orleans." He proceeded to throw out hints calculated to excite in the minds of those present apprehensions of imminent danger from an armed invasion of the territory under Burr, whose adherents, he said, were numerous in the city, including two counsellors of that court! The speaker then cast his eyes slowly round the bar, seeming to enjoy the suspense which the members suffered till he inquired if Mr. Alexander were in court. Mr. Alexander being absent, the General requested that he might be sent for and committed to close custody, as he intended, before leaving court, to prefer against him a charge of high treason. He proceeded: "As to Mr. Livingston, I have evidence that Dr. Bollman brought a draft upon him for two thousand dollars and upwards, from Colonel Burr, which he paid." The General then read part of an affidavit, purporting to be made by one Rodgers, the substance of which was, that, nearly a year before, Rodgers had heard one Keene — a person who had been long absent from the country — say that there were a number of men who had agreed to undertake an expedition to Mexico, and on being urged to declare who these men were, had answered, "There's Livingston." But the affidavit added, that Rodgers had at the time "thought Keene so little in earnest, that the circumstance had not occurred to him until within a few days past."

Upon this statement, the Commander-in-Chief of the army, and lately demonstrative friend of Mr. Livingston,

held forth to the court and the people assembled, in justification of the arrests already made, and of others which he might yet have to make; declaring, amongst other things, that "desperate cases require desperate remedies;" that "it is sometimes necessary to cut off a limb to preserve the body," to "lop off a rotten branch to save the tree." He finished by asking the court that his oath might be taken to the truth of the charges he had exhibited. He raised his hand as if to have the oath administered, when the court mildly suggested the propriety of reducing the statement to writing. He then hesitated. One of the judges offered him a seat at his side on the bench, and proposed himself to take down the charges and testimony. This the General declined; upon which the court suggested that one of the judges would wait on "His Excellency," * at any time that might be convenient to him, to take his deposition. This offer the conquering hero condescended to accept, and retired from the bar, after receiving the thanks of the presiding judge for his communication, and an apology for the trouble the business had caused him.

But just as Wilkinson was about to withdraw, Mr. Livingston, who, till then, during this shocking scene of judicial sycophancy, had sat in melancholy silence, arose to demand and then to entreat of the court that his accuser should not be allowed to leave the bar without substantiating his charge upon oath, in order that, if it should appear that he was guilty, he might be immediately committed to prison, and if not, that he should not be compelled to go home loaded with the suspicion of crime. The appeal was fruitless, and the General went his way, promising, however, to make good the charge on the following day.

* Wilkinson was Governor of Upper Louisiana.

Mr. Livingston now demanded an opportunity, before the court and audience, on the spot, to meet the accusation, so far as it had been made specific. After some difficulty and hesitation this request was granted; and he thereupon made a full and simple statement of all the circumstances connected with the draft of Burr, which he produced and read. Among the private debts which the transfer of all his property, before leaving New York, had left unprovided for, was a claim held by the firm of Dunham & Davis, upon which judgment had been entered against him. The judgment had been assigned to Aaron Burr, and Mr. Livingston had once or twice been called upon to pay the debt, before it was possible for him to do so. The draft given by Burr to Dr. Bollman ran as follows: —

"DR. SIR: Doctor Bollman will receive whatever you may be disposed to pay him on my account, and will give a discharge on payment of fifteen hundred dollars. A part, at least, of this sum will be necessary to him; but I should not have troubled you if I could have paid him from other resources.

"A. BURR.

"*Philadelphia*, 26th July, 1806.

"To EDW. LIVINGSTON, Esqre."

When this paper was presented by Dr. Bollman, Mr. Livingston was entirely unprepared to pay the sum demanded. But he had recently sold a plantation, receiving the purchaser's obligations, not yet due, in part payment. After two months' delay and negotiation, he had arranged with this debtor to accept his draft for the amount required to satisfy that held by Bollman; and so the latter was taken up, and Bollman received the money.

As to the matters of hearsay vaguely set out in the affidavit of Rodgers, Mr. Livingston made a most impressive declaration that he was utterly ignorant of any of the plans which it was said Colonel Burr was executing, either for dismembering the Union or contravening its laws, except what he had heard from the newspapers, the communication of General Wilkinson, or public report; and that he had never held any communication, either written or verbal, with Colonel Burr, or any other person whom he knew or suspected to be concerned with him in the subject of those plans.

The effect of this prompt and spirited self-defence, upon those who listened as well as upon his accuser, was afterwards recounted by Livingston in the following language: —

"There is a force in the language of truth, there is a commanding aspect in the looks of innocence, that can rarely be assumed by falsehood or guilt; and I am persuaded few if any of my auditors retired with impressions to my prejudice. The General seems to have thought so too; for, on the following day, when I went to court to hear the charges he had engaged to exhibit, I met a gentleman of his family, who, in answer to my earnest inquiry whether the General's affidavits were prepared, told me that intelligence had arrived which did not leave him leisure to attend to them, and that he did not believe they would that day be produced. Seeing my extreme chagrin at this delay, he told me he was persuaded that the General would feel much gratified, if I could exonerate myself from the charge; that he had been forced into the accusation by imperious circumstances, but that he had little doubt, if I could remove his suspicions as to the payment of the money to Bollman, (which, he added, was the principal circum-

stance,) he would be ready to do me ample justice, and concluded by suggesting the propriety of my calling on the General. This I refused to do, but said that I would reflect on the other proposition; and after consulting with some friends, I determined to send the papers I had read in court, with some others which I was sure must remove every doubt as to the nature of the transaction. Meeting the gentleman shortly after, I told him my determination; and he appointed an hour to call on me for the documents, and expressed a joy which I am sure he felt, on the prospect of an arrangement that would do full justice to my character. He arrived soon after the hour appointed, but apologized for the delay by stating that he had since been to the General; that he was desirous to do me justice, and anxious that I should exonerate myself from the charge, but that it was absolutely necessary he should see me, in order to show some papers which had been exhibited, and which I understood were to explain the reasons why he had thought himself obliged to accuse me; but that the payment of the money to Bollman was still the principal charge, and this being explained, he would almost venture to pledge himself that General Wilkinson would appear in an open court, to be called at his request, and make any statement I could reasonably desire, to remove the effect of his charge. The idea of presenting myself and making explanations to a man who had so cruelly injured me, appeared, at first, too humiliating to be borne; but the pain which these accusations must give to my friends at a distance, the humiliating circumstances attending a newspaper assertion of innocence, the certainty that it could never be so effectually done as by the mode proposed, and — shall I be called pusillanimous? when I add — the fear of inevitable ruin to my

family from a military arrest and removal, all concurred to produce the reluctant assent, which, after a delay of some hours, I gave to the proposition of calling at head-quarters in company with a friend. Eight in the evening was the hour appointed. The gentleman to whom I before alluded was so perfectly persuaded that the visit would end in the most satisfactory arrangement, and expressed so friendly a pleasure in the prospect, that I could scarcely believe him in earnest, when, at the hour appointed, with a mortification he did not attempt to conceal, he met me on the gallery, at head-quarters, with a message, 'that the General had just received a letter which determined him not to see Mr. Livingston, or any of his friends.' This cruel insult, added to the injuries I had received, made me feel the humiliation to which I had exposed myself; and I returned home, with the full persuasion that I should find the guard for my arrest stationed at my door."

But his apprehensions of arrest were happily not realized. Alexander was seized, and hurried, with others, as Bollman had been, forcibly, to Washington, where nothing could be proved against them. Mr. Livingston, being unmolested, so far defied the military tyrant as to make an ineffectual attempt to rescue Alexander by the writ of *habeas corpus;* and he published, on the spot, an address to the people, setting forth all the particulars of the transaction, and expressing his views and sentiments concerning it, without reserve or any sign of fear.

When he returned to his house after the scene in court, in which the accusation of Wilkinson had fallen suddenly as a thunderbolt upon him, his young wife, then the mother of their only child, but a few months old, besought him earnestly not to withhold from her

any part of his confidence. "We have not lived long together," she said, "and you may not know the whole strength of my character or of my affection. Whatever may have been the scheme of Burr, if you have had anything to do with it, tell me, so that I may share your thoughts as well as your destiny." His response was a laugh so hearty as to dispel in an instant from her mind any shadow of fear that he was really implicated in the mysterious enterprise.

In the obvious characters of these two men, —Wilkinson and Livingston, — upon one of whom Thomas Jefferson, by a twofold error, was now deliberately bestowing the confidence which he had deliberately withdrawn from the other, there is a good illustration of the practical weakness of human judgment. And the mutability of a great man's judgment is still more manifest in the fact that Mr. Jefferson, though then in the decline of life, was yet to live long enough to reverse completely in his own mind the double misconception under which he was judging and acting towards both, — at least, as will hereafter appear, towards Livingston.

Thus a grave danger was fortunately and narrowly escaped. The imputation was disposed of thoroughly, and no damaging effect remained. Wilkinson's position at New Orleans soon became ridiculous, and every cloud seemed lifted from the prospects of Mr. Livingston. The object of his most ardent desire was in a fair way to be accomplished. But he soon had to encounter a new difficulty, and a more formidable adversary, — a misfortune not so alarming as the one just avoided, but many times more vexatious.

CHAPTER VIII.

THE BATTURÉ CONTROVERSY.

A CONTROVERSY, very celebrated in its day, which took place between Thomas Jefferson, President of the United States, and Edward Livingston, citizen of Louisiana, relating to the title and possession of a piece of ground called the Batture Ste. Marie, was one of the most interesting mental encounters ever witnessed anywhere. There was every circumstance to make it so in the relative positions, the ability, the interest, and the temper of the parties. They had been attached personal friends; but one had become estranged in consequence of the misfortune, which he also regarded as the fault, of the other. In politics, one had founded a sect of which the other had, in youth, become a disciple, — a faith from which the latter never swerved during a long life. The President had appointed Mr. Livingston to an office, implying a financial confidence which, he felt, had been disappointed; and Mr. Jefferson's charity did not easily cover such a case. Besides, the then recent accusation of Wilkinson had doubtless left its bad impression upon his mind. Being thus predisposed to view in the least favorable light any act of his adversary which might be construed as an encroachment upon the public right, he was led, by the first representations he received concerning Mr. Livingston's Batture enterprise, into an opinion which turned out to be mistaken; and was hurried, by his zeal, upon

a course which he finally, with good reason, regretted. In this mood he gave to the controversy, both while in office and for a period after his retirement, the best resources of his mind and energy; studying for himself the most recondite applicable topics of the civil and the common law, and of the French and Spanish systems, marshalling the facts with all his skill, for the use of counsel, and finally printing, for his own justification before the public opinion of the country, careful and repeated editions of a most elaborate and finished argument, built of these labors. With his official vantage, a concurring Cabinet and Congress behind him, and popular prejudices favoring his action, an ordinary antagonist he would have easily annihilated, and might himself have remained for life unconscious of his error; as it was, he must have concluded at last that he had been fairly dislodged from a false position in a manner more effective than tender. His blows were indeed aimed at a wounded giant, who, feeling that he was in the right, and that his own escape from temporal ruin was staked upon the result of the conflict, exerted to the utmost every muscle and nerve to beat back the assailant.

When two champions of such figure engage with deliberation and spirit in a strife of this sort, all men are pugilistic enough to be refreshed by the spectacle. The combat here attracted and held public attention for years, in an unusual degree; both combatants in the course of it freely appealing, in print, for moral support directly to the people of the United States. Various volumes of law-reports are largely given to the arguments of counsel and decisions of the courts at different stages of the proceedings; and elaborate and voluminous reviews of the controversy by the two principals passed through more than one edition. I propose to give in

this chapter a concise account of the subject and manner of the dispute.

The region bordering upon both sides of the Mississippi River, for about one hundred and fifty miles above its mouth, is a low, alluvial country, apparently created upon the sea by annual deposits of the upper country's soil brought down during many ages by the turbid stream. As in other countries thus formed, the immediate natural banks of the river are higher than the general surface of the ground behind them. The ordinary height of the water in the channel is but a few feet lower than the top of the natural banks. During half of every year, the rains and melted snows of the vast region which the river drains swell its current towards the mouth to a height above that of the natural banks, so that the whole of the lower country referred to, including the site of New Orleans, was, before its civilized occupation, yearly overflowed for several months. This inundation was afterwards prevented by the erection on each shore of a narrow dike, called a levee, along the top of the natural bank, high enough to confine the waters in their most swollen state. The river being deep and muddy, and pursuing a winding course, necessarily, when thus restrained, wrought many gradual changes in the line of the shores, adding at some points a constantly increasing soil to one side, and carrying away compensation from the other.

Early in the last century, the society of Jesuits, under grants from the King of France, became possessed of some lands on the bank of the Mississippi, adjacent to the city of New Orleans. In 1763, and just before the cession to Spain of the province of Orleans, the order of Jesuits was abolished in France, and its property was forfeited to the Crown. Under an edict of confiscation,

the land just mentioned was seized and sold. That part of it nearest the city afterwards came to the possession of Bertrand Gravier, who divided it into suburban lots, which he sold and conveyed to several purchasers. In the mean time, the river was every year depositing alluvion in front of the whole ground. The deposit being lower than the levee, was, in the season of low water, uncovered, but submerged during the time of the annual flood, so that it could serve as an anchorage sometimes, and sometimes as a quay; and, being convenient to the people of New Orleans, it came to be used a good deal for these purposes without question. This new ground was called the Batture Ste. Marie.

Bertrand Gravier dying, without children, a little before the transfer of the province to the United States, his brother John inherited his property by a process known to the civil law, which gave it to him, according to his option, in the character of a purchaser, and exempted him from liability for the debts of the estate beyond the property's inventoried value. The attention of John Gravier was soon turned to the condition of the Batture, and his own rights with respect to it; and as early as 1803 he enclosed a portion of it with a fence. But no very definite claim to the exclusive possession of the ground as property was set up by him, or by the public, or by anybody, until Mr. Livingston opened his law-office in New Orleans, and John Gravier became one of his first clients. Being called upon for his advice, he learned the history of the ground, investigated the law relative to the rights of riparian owners in such cases by studying the Roman, the French, the Spanish, and the English regulations upon the subject, and then declared his opinion to be that John Gravier was the legal owner of the principal part of the Batture Ste. Marie.

The rapid growth of New Orleans had now commenced, and Livingston at once perceived that, if his professional opinion was sound, there was value enough in the property for several fortunes. This rural bank must soon give place to urban wharves like those of New York. Ah! here was a mine to be worked, and opportunity to escape from bankruptcy at a single bound, instead of trudging only the tedious road of careful industry. He immediately undertook the prosecution of legal proceedings on behalf of Gravier, to secure an undisturbed possession of the ground, and purchased a portion of the property for himself. If he could have foreseen the variety and extent of the obstacles before him,—the weary war of arguments, demurrers, and appeals; of popular prejudice and mob violence; of forcible official opposition from the executives of two governments, — the Territorial and the National; of laborious correspondence; of voyages to Washington; of petitions to Congress; of ridicule, scorn, and slander,—probably he would have taken the longer and more quiet path to fortune. But whether or not he would have avoided entrance to the quarrel, he chose, being in, to bear it, with what spirit the reader will have an opportunity to see. In the end, though failing, through the law's delay and the vacillating action of a local court, to reap the full material advantages to which he had looked forward, yet he achieved a complete moral victory,—his latest triumph being, as I shall have occasion to show, over the inveterate prejudices of his celebrated adversary. The contest proved a clear advantage to his reputation, though a clog to his fortune and a Will-o'-the-wisp to his persistent exertions.

The suit of Gravier was against the city of New Orleans, and his prayer to the court was for the confirmation of a quiet title. The litigation proceeded without any

noise for two years, till early in 1807, when judgment was pronounced in the plaintiff's favor, one of the three judges delivering a dissenting opinion. Soon afterwards Mr. Livingston entered upon his portion of the property and commenced improving it. Then there was commotion in the city. The people suddenly awoke to the perception of a great danger and a grievous wrong. They had piled wood and merchandise upon the Batture Ste. Marie and had carried away earth from it at pleasure for some years; why should they not continue to do so? The ground had belonged to nobody; therefore it was theirs. They had before looked upon Livingston as a great lawyer; he now became in their eyes a sort of legal Mephistopheles,—a being of such more than mortal subtlety that he threatened to employ the forms of law to appropriate whatever he might covet. This kind of art had made him rich in a day; and besides, it was his intention to proceed at once to such a use of the Batture as to dam the Mississippi, or, at the least, to turn its channel so as to inundate the country, drown the city, —and, of course, sink his new fortune. His work upon the ground was presented by the grand jury as a nuisance. His laborers were, more than once, driven from their employment by the populace. The Governor of the Territory — Claiborne — was appealed to for military interference. Being a timid, or at least a peaceable man, he quieted the tumult for the time, by promising an immediate reference of the whole matter to the General Government.

A messenger was despatched to Washington to report the facts, and represent that, in the Governor's opinion, the Batture Ste. Marie legally belonged to the United States as sovereign of the soil. The President took up the subject with lively interest. Cabinet dé-

liberations were devoted to it. The Attorney-General was called upon for his opinion in writing, which, when produced, was in favor of the title of the United States. Mr. Livingston was held to be an intruder. Prompt and efficient measures were taken to extinguish his enterprise. The Marshal of the District of Orleans was instructed by a letter of the Secretary of State, of November 30, 1807, "to remove immediately by the civil power any persons from the Batture Ste. Marie who had taken possession since the 3d of March;" and the Secretary of War simultaneously ordered the commanding officer at New Orleans to use military force for the same object, if required by the Governor.

The Marshal found Mr. Livingston's men at work on the ground. At his command they desisted, but soon returned by direction of their employer. An order was obtained from a judge of the Superior Court of the Territory and served upon the Marshal, forbidding his interference, under pain of a contempt of court. He disregarded the injunction, and dispossessed Mr. Livingston.

The business of the controversy was now fairly opened. Mr. Livingston brought an action against the Marshal, in the Federal court at New Orleans, to recover, according to the forms of the civil law, damages for his expulsion, and a restoration to possession, and, somewhat later, another action for damages against Mr. Jefferson, in the district of the latter's residence. He published pamphlets upon the subject. He made Congress ring with his complaints. He besieged the Executive with offers to submit his claim to any form of trial or arbitration, whilst loudly demanding a hearing of some sort. But all his labors were without fruits, so far as the action of any branch of the government was concerned. If the President had been a mild despot, in character

and in power, he could not have held his enemy in a stricter helplessness for the time being. Congress was friendly to him and deaf to the subject. He utterly refused or neglected every entreaty for a fair, or any, hearing of the case on its merits. In the personal action against himself, he turned the plaintiff out of court by demurring to the jurisdiction. The latter seemed to be, and began himself to feel like, a ruined man. He afterwards declared, that during this period he keenly felt all that Spenser describes in the lines,—

> "Full little knowest thou, that hast not tride,
> What hell it is, in suing long to bide;
> To loose good days that might be better spent;
> To wast long nights in pensive discontent;
> To speed to-day, to be put back to-morrow;
> To feed on hope, to pine with feare and sorrow;
> To fret thy soul with crosses and with cares;
> To eate thy heart through comfortlesse dispaires;
> To fawn, to crowche, to waite, to ride, to ronne,
> To spend, to give, to want, to be undonne."

Years went by, and Mr. Jefferson passed out of office. Mr. Livingston had resumed the more even tenor of professional life, and had made advances in public estimation. The litigation of the cause against the Marshal at New Orleans was approaching a decision. There was a manifest modification of the popular sentiment, with respect to the merits of the case. It now occurred to the ex-President that if the judgment of the court should be pronounced in Livingston's favor and followed by acquiescence on the part of the public of New Orleans, his own conduct would require careful explanatory treatment to make it appear at all excusable. It would then be clear, that, acting upon *ex parte* representations, and refusing to hear both sides, he had forcibly invaded the rights of a citizen, because he had the physical power to do so, and because it happened to be a case in which

his own sentiments had been in unison with those of a mob. The result of this kind of reflection was that he furbished, at leisure, the notes and argument which he had before prepared for the use of counsel, left it all bristling with vituperation and ridicule of his adversary, and printed the whole for circulation through the country in 1812. This paper is a pamphlet of ninety-one pages, entitled "The Proceedings of the Government of the United States, in maintaining the Public Right to the Beach of the Mississippi, Adjacent to New Orleans, against the Intrusion of Edward Livingston. Prepared for the Use of Counsel, by Thomas Jefferson." The author, in 1814, by request of the Editor of the "American Law Journal," printed at Baltimore, furnished a copy, with additional notes, for republication in the same number of that periodical in which first appeared "An Answer to Mr. Jefferson's Justification of his Conduct, in the Case of the New Orleans Batture. By Edward Livingston. *Nullæ sunt occultiores insidiæ, quam quæ latent in simulatione officii, aut in aliquo necessitudinis nomine.* Cicero," — a pamphlet of one hundred and ninety-five pages.

Mr. Jefferson, by his official action in this affair, committed a serious error which proved a serious outrage. His self-vindication just mentioned was a laborious blunder; for it called forth a reply from Mr. Livingston of which no man could well afford to be the subject, — a performance, in its kind, never surpassed, I presume, by any lawyer. The author of the Declaration of Independence was, on political subjects, the wisest and most eloquent writer of his time. But it was a mistake for even him to challenge and provoke such an opponent as Edward Livingston, under the circumstances above detailed.

In method the disputants differed greatly. Mr. Jefferson's paper, though relieved by frequent sharp and rapid incidental thrusts at his adversary, is a rather dry and labored disquisition, upon topics for the most part now of little interest to any but the legal scholar. The answer, though in its stating and strictly argumentative parts as concise and direct as the other, is yet so overlaid with riches of style, pungency of satire, and fulness of eloquence, that, in spite of its length, its entire perusal will, at any time, delight the educated reader.

Mr. Jefferson begins at once with his ingenious version of the facts, having made the following exordium in the form of a preface: —

"Edward Livingston, of the Territory of Orleans, having taken possession of the beach of the river Mississippi, adjacent to the city of New Orleans, in defiance of the general right of the nation to the property and use of the beaches and beds of their rivers, it became my duty, as charged with the preservation of the public property, to remove the intrusion, and to maintain the citizens of the United States in their right to a common use of that beach. Instead of viewing this as a public act, and having recourse to those proceedings which are regularly provided for conflicting claims between the public and an individual, he chose to consider it as a private trespass committed on his freehold, by myself personally, and instituted against me, after my retirement from office, an action of trespass, in the Circuit Court of the United States for the District of Virginia.

"Being requested by my counsel to furnish them with a statement of the facts of the case, as well as of my own ideas of the questions of right, I proceeded to make such a statement, fully as to facts, but briefly and generally as to the questions of right. In the progress of

the work, however, I found myself drawn insensibly into details, and finally concluded to meet the questions generally which the case would present, and to expose the weakness of the plaintiff's pretensions, in addition to the strength of the public right. These questions were, of course, to arise under the laws of the Territory of Orleans, composed of the Roman, the French, and the Spanish codes, and written in those languages. The books containing them are so rare in this country as scarcely to be found in the best furnished libraries. Having more time than my counsel, consistently with their duties to others, could bestow on researches so much out of the ordinary line, I thought myself bound to facilitate their labors, and to furnish them with such materials as I could collect. I did it by full extracts from the several authorities, and in the languages in which they were originally written, that they might judge for themselves whether I had misinterpreted them. These materials and topics, expressed in the technical style of the law, familiar to them, they were of course to use or not to use, according to the dictates of their own better judgment. If used, it would be with the benefit of being delivered in a form better suited to the public ear. I passed over the question of jurisdiction, because that was one of ordinary occurrence, and its limitations well ascertained. On this, in event, the case was dismissed; the court being of opinion they could not decide a question of title to lands not within their district. My wish had rather been for a full investigation of the merits at the bar, that the public might learn, in that way, that their servants had done nothing but what the laws had authorized and required them to do. Precluded now from this mode of justification, I adopt that of publishing what was meant originally for the private eye of counsel."

This preface is dealt with and the whole subject opened by Mr. Livingston in the following passage: —

"When a public functionary abuses his power by an act which bears on the community, his conduct excites attention, provokes popular resentment, and seldom fails to receive the punishment it merits. Should an individual be chosen for the victim, little sympathy is created for his sufferings, if the interest of all is supposed to be promoted by the ruin of one. The gloss of zeal for the public is therefore always spread over acts of oppression, and the people are sometimes made to consider that as a brilliant exertion of energy in their favor, which, when viewed in its true light, would be found a fatal blow to their rights.

"In no government is this effect so easily produced as in a free republic; party spirit, inseparable from its existence, there aids the illusion, and a popular leader is allowed in many instances impunity, and sometimes rewarded with applause for acts that would make a tyrant tremble on his throne. This evil must exist in a degree, — it is founded in the natural course of human passions; but in a wise and enlightened nation it will be restrained; and the consciousness that it must exist will make such a people more watchful to prevent its abuse. These reflections occur to one, whose property, without trial or any of the forms of law, has been violently seized by the first magistrate of the Union, — who has hitherto vainly solicited an inquiry into his title, — who has seen the conduct of his oppressor excused or applauded, — and who, in the book he is now about to examine, finds an attempt openly to justify that conduct upon principles as dangerous as the act was illegal and unjust. This book relates to a case which has long been before the public, and purports to be the substance of

instructions prepared by Thomas Jefferson, late President of the United States, for his counsel, in a suit instituted by me against him. After four years' earnest entreaty I have at length obtained a statement of the reasons which induced him to take those violent and unconstitutional measures of which I have complained.

"It would perhaps be deemed unreasonable to quarrel with Mr. Jefferson for the delay, when we reflect how necessary Mr. Moreau's Latin and Mr. Thierry's Greek, Poydras's elegant invective, and his own Anglo-Saxon researches were to excuse an act for which, at the time he committed it, he had no one plausible reason to allege. Such an act, certainly, is easier to perform than to justify; and Mr. Jefferson has been right in taking four years to consider what excuse he should give to the world for his conduct, and still more so in laying under contribution all writings, all languages, all laws, and in calling to his aid all the popular prejudices which his own conduct had excited against me. He wanted all this and more, to make a decent defence. But it was rather awkward to press into his service facts which, it is confessed, he did not know at the time, and something worse than awkward to impose on the public, as I shall show he has, by *false translations* and *garbled testimony*. But we must excuse the late President: '*his wish had rather been for a full investigation of the* MERITS *at the* BAR, *that the public might learn, in that way, that their servants had done nothing but what the laws had authorized and required them to do*,' and 'PRECLUDED *now from that mode of justification, he adopts that of publishing what was meant originally for the private eye of counsel.*' I give the words of the author here, lest in this extraordinary sentence I should be suspected of having misrepresented or misunderstood him. An in-

dividual holding a tract of land, under one whose title had been acknowledged and whose possession had been confirmed by a court of competent authority, is violently dispossessed by the orders of the President of the United States, without any of the forms of law and in violation of the most sacred provisions of the Constitution; — the ruined sufferer seeks redress, first by expostulation; he offers to submit to the decision of indifferent men, and he is refused; he offers to abide by the sentence of men chosen by the President, and he is refused; he offers, in the simplicity of his heart, to acquiesce in the opinion even of the President himself, and he is refused. He is not even permitted to exhibit his proofs. Fearing the conviction they would produce, he is told that though the President could take, he cannot restore; that he can injure, but not redress; and that Congress alone are competent to grant him relief. To Congress then he applies; — here the same baleful influence prevails. After two voyages of three thousand miles each, after two years of painful suspense and humiliating solicitation, after an attendance of three sessions, he finds that no means can be devised for his relief; that the friends of that man who '*wishes for a full investigation of the merits at the bar*' defeat every plan for bringing the cause before a court, vote against every law providing for a trial, and effectually, as they think, and he hopes, bar all access to any tribunal where the dreaded merits of the case could be shown. Harassed but not dispirited, the injured party, finding that no legislative aid can be expected to restore his property, at length applies by suit for a compensation in damages; he appeals to the laws of his country, and is willing to abide by the decision of a jury, in a country where long residence, great wealth, the influence which had been created by office,

and a coincidence of political opinion gave every advantage to his opponent. Here, then, is an opportunity which a man desirous of open investigation will not neglect. The upright officer who has been unjustly accused of oppression, will justify himself to his country, and cover his accuser with confusion. The vigilant guardian of the public rights will defend them before an enlightened tribunal, and expose the rapacity of the intruder. He who stands 'conscious and erect' will rejoice in the investigation of his innocence, he will discard every form, and proudly dare his adversary to a discussion of the merits!

"But the man I speak of does not do this, — the man I speak of did not dare to do this. He feared the learned integrity of a court, — he feared the honest independence of a jury. He intrenched himself in demurrers, sneaked behind a paltry plea to the jurisdiction, and now publishes to the world that he is *precluded* from this mode of justification, and that 'his wish had been for a full investigation of the MERITS at the BAR.'

"If such indeed were his wish, why was it not gratified? And by whom was he *precluded* from this favorite mode of defence? He does not indeed hazard the direct assertion that it was the unsolicited act of the court. His plea to the jurisdiction, his demurrers, not to mention an attempt to stifle the suit in its birth by a rule to find security for costs, — all these would too apparently falsify such an assertion. But though not stated in direct terms, is not the idea strongly conveyed? Was it not meant to be thus conveyed? When Mr. Jefferson says that the suit was dismissed on the question of jurisdiction, and that 'his wish had rather been for a full investigation of the merits at the bar,' what are we to conclude? What, I repeat, did he intend we should conclude, but that the decision of the court was unsolicited and con-

trary to his wish?—and yet he, the gentleman who tells us this, had put in a plea to the jurisdiction, that is to say, prayed the court to dismiss the cause without an investigation of the merits. He did more: fearing that this question might be decided against him, he put in a demurrer to the declaration; that is to say, he took an exception to its form, and prayed the court a second time, that, on this account, also, the cause might be dismissed without an investigation of the merits. He did not stop here: a third battery was erected; he pleaded another plea, that he did the act complained of as President of the United States, and that therefore he ought not to be made liable in his individual capacity; and a third time prayed to the court that the cause might be dismissed without an investigation of the merits. How Mr. Jefferson can reconcile these pleas with his wish to obtain a hearing on the merits, it is difficult to conceive. The coward who, on receiving a challenge, resorts to the interposition of a magistrate, might as well bluster about his desire fairly to face his adversary, and complain that he was precluded from giving him satisfaction. Yet this preclusion is stated by Mr. Jefferson as his reason for publishing the work which I am now about to examine. He had many advantages in the execution, and promised himself many more in the effects of this production. The subject had been fully and ably discussed, but the publications on the adverse side were not in many hands. A considerable time had elapsed since the subject engaged the public attention. He had therefore only to arrange the arguments in his favor, to suppress or mutilate the conclusive answers which had been given to them, to collect all the quotations that had been used in the discussion, to give a new dress and the sanction of his name to the calumnies circulated against his

opponent, and he would make a book that should astonish by the polyglot learning of its quotations, amaze by the profundity of its borrowed research, and delight kindred minds by the poignant elegance of its satire. Add to these the advantages of using hearsay testimony, *ex parte* testimony, interested testimony, his own testimony; of quoting authorities with an *et cætera* for those parts which bear against his positions; of omitting a word in the translation of a deed, and founding a long argument on the false reading thus created; add the facility of gaining over to his party that large portion of mankind who find it much more convenient to be convinced by the reputation of the author than to examine his work, and, above all, the hope that disappointment and despondence might silence his opponent, — and we shall have much better reasons for resorting to a publication of his 'instructions to counsel' than the alleged preclusion of a hearing at the bar. Whatever may have been the causes which produced this work, I rejoice exceedingly in the effect. My wish, also, had 'rather been for a full investigation of the merits at the bar;' but an appeal to the public is preferred, and I shall not decline it. Causes of less importance have sometimes excited an interest, not only in the countries where they originated, but abroad. The despotic King of Prussia could not oppress one of his subjects under the forms of law without exciting the indignation of Europe. Lawyers of the greatest eminence took cognizance of the affair; and the force of public opinion, even in a military monarchy, obliged the prince to do justice to his vassal. Shall I then fear a less beneficial effect, when I can show that the free citizen of a free country has been deprived of his property by its first magistrate, without even the forms of law? I do not fear it. However dull may

be the discussion, however laborious the research, it will not deter those who have an interest in inquiring whether their '*servant* has done his duty,' or has been guilty of unconstitutional violence. I invite readers of this description to follow me in the investigation I am about to make."

The ex-President thought fit in his pamphlet to make and argue several points not relevant to the government's rights on the theory of which his action had been based, points which, therefore, could only be used with a view to exciting or keeping alive prejudices against his adversary. One of these positions was that the deeds from Bertrand Gravier were as comprehensive as the conveyance to him; so that if he had once owned the Batture, he had parted with it also. Another ground thus taken was, that if the property had descended from Bertrand Gravier, John did not take the whole, but only an interest in common with his brother and sister, who resided in France. Both these propositions were maintained at length and with pains by Mr. Jefferson. In support of the former, he incorporated in his argument a printed copy of one of the deeds from Bertrand Gravier, in the original Spanish, with an English translation of his own in an opposite column, and offered it as a fair specimen of all the conveyances by the same proprietor. The answer of Mr. Livingston showed that the late President had mistranslated the Spanish record by omitting a material word; that still the particular conveyance was an exception to the others; that some of them bounded the land they conveyed in front in terms by the levee, and that others referred to a map or plan exhibiting the same boundary; that the Batture was expressly reserved in some, and in others expressly granted; and that in the latter cases Mr. Livingston had purchased from the

grantees. These materials are used very effectively in the answer, which, after insisting that the only questions which it became Mr. Jefferson to discuss were, Did the land belong to the United States? Had the government a right to seize it? takes leave of this point in the following way: —

"I think I may, therefore, dismiss this first head of justification, and that I may, without flattering myself, believe that I have shown it both immaterial to the defence of the late President, and destitute of any foundation if material; — I have shown that none of those front proprietors can be considered as owners of the alluvion, because their deeds refer to the plan, which does not carry them to the river; because very many of them refer not to the river, but to the levee, as their front exposure; and because those who have an express conveyance (except one) have disposed of their right, by sale, to the present claimant; and in all events, if theirs, it ought, as their property, to have been as sacred as if mine."

Mr. Jefferson's other suggestion, in favor of the French brother and sister of Gravier, is diligently refuted in several paragraphs, beginning in the following quiet and pungent strain: —

"Having thus secured the rights of the front proprietors, this provident magistrate next takes the co-heirs of John Gravier under his paternal care. He has discovered that John Gravier (in fraud of his brothers and sisters, as he charitably insinuates) procured the property of his deceased brother to be adjudged to him; that this Batture was not comprised in the adjudication; and that it therefore remains the property of the heirs. And what then, Sir? Why, if this statement be true, John Gravier, as one of the three heirs, would have a right to convey his undivided third; but surely it gives none to you to take

it away from his grantee or from the co-heirs in France. As, however, I know it must give great satisfaction to a mind so feelingly alive to the interests of absentees, to know that they are not dissatisfied with the transaction, I have the pleasure to inform you that they have ratified their brother's sale of the Batture, and that their concerns need no longer occupy your attention."

After disposing of these topics, Mr. Livingston proceeds to the consideration of a charge of collusion and champerty, elaborately preferred in the ex-President's pamphlet. I quote a part of his observations upon this head: —

"We are now prepared to accompany Mr. Jefferson in his attempt to show, not that the property belongs to another, but that it does belong to the United States, and that he had a right forcibly to seize it. But we are not so soon to be gratified: more prejudices are to be excited against the injured proprietor; another attempt is to be made to show that his title is defective, — as if changing the party injured would lessen the offence. The title of Mr. Delabigarre, under which I claim a part of the lands, is said to be illegal, and, of course, I suppose, void. But if so, does it vest any title in the United States? Admitting that he were guilty of champerty, no new title would thereby accrue to them. The parties might be punishable; the deed might perhaps be declared void; but the United States acquire no rights which they had not before. Why, then, is the subject introduced? Because in a bad cause it is easier to address the passions and prejudices of men, than to consult their reason or convince their understanding; because it was supposed that the name of Mr. Jefferson would give new currency to the forgotten calumnies of New Orleans; and because some men can never forgive those whom they have injured.

"The repetition of this charge might be excused, if it had not before been repeatedly resorted to, if Mr. Jefferson had not seen the refutation, and if he had not the evidence of the falsity of the charge before him.

"It is begun by an allegation, 'that, for six years after his purchase, John Gravier never manifested a symptom of ownership until Mr. Livingston's arrival from New York,' and that then Gravier received his inspirations that the beach (as he chooses to call it) was his; that I tempted him to lend his name to the suit, but really prosecuted it for my own benefit. This charge is made with an air of levity, and a wretched attempt at wit, which could proceed from no one but a man hardened, by repeated attacks on his own character, into a total insensibility for that of others. *I first gave the idea to Gravier that the property was his!* — yet, ten years before my arrival, his brother had, by four several recorded deeds, disposed of different parcels of it; and Mr. Jefferson, who makes the charge, knew this fact. *I first stirred up a dormant claim!* — yet I did not arrive until the 7th of February; and in December preceding, a square of five hundred feet was begun to be enclosed with a levee and ditch, and Mr. Jefferson had evidence of the fact. *I first gave Gravier an idea of his claim!* — and yet, previous to my purchase, he had agreed to sell it to Mr. Clark and Mr. Morgan; and Mr. Jefferson had this evidence of the fact, that I had published it at the place where both those gentlemen live, and that it was never contradicted. What does he oppose to this mass of proof? Nothing but an assertion that he 'might safely presume that Gravier's work was not begun while the French governor thought the country belonged to his master,' and most probably not until after my arrival. Now he knew that I had arrived in February, 1804, and

he acknowledges that the enclosure was ordered to be destroyed on the 22d of that month; so that Mr. Jefferson thinks it probable that, arriving in New Orleans on the 7th of February, I should immediately find out Gravier; inspire him with so much confidence as that, by my persuasion, he should set up a most unfounded claim; proceed to assert it by making, at a great expense, a ditch and embankment round a square of five hundred feet, that is to say, two thousand feet of levee; and that this plan should be formed by a perfect stranger in the country, communicated to a man he had never seen before, and that the whole should be executed in fourteen days from the time that he first touched the shore. This Mr. Jefferson thinks so probable as to counterbalance oaths, records, and the silent assent of those most conusant of the fact, and most interested in contradicting it; and thus he uses the influence of his late exalted station, to perpetuate refuted calumnies, and stigmatize the character of a man whose fortune he had wantonly ruined."

The course of the argumentation with respect to the merits of the case cannot be pursued here; but a few additional passages may be quoted, as samples of the characteristic manner of Mr. Livingston's performance. In the following paragraphs he sets about the more direct part of the issue: —

"Having repelled all the skirmishing attacks which have hitherto impeded our progress, we at length approach the body of Mr. Jefferson's defence. It consists of the following points: —

"I. That alluvions of navigable rivers, by the law of France, belong to the King; and that those of the Mississippi have been transferred, with the other sovereign rights, to the United States.

"II. That the right of alluvion accrues only to rural, not to urban possessions.

"III. That the property in question is not an alluvion, but part of the bed of the river, which belongs to the sovereign.

"IV. That the use I made of the property was dangerous to the safety of the city of New Orleans, and an infringement on the public right to navigate the river; that my works were a nuisance, and that the President had a right to abate it.

"In discussing these points, I feel an embarrassment from the reflection that almost everything I shall say has been anticipated, either in my own publications or those of the learned counsellor and excellent friend * whose disinterested zeal has advocated my cause; and I cannot but admire the patient perseverance with which Mr. Jefferson consents to transcribe the oft-repeated authorities, to rally the broken sophisms, and once more array in his service the ten times refuted arguments which, at different periods, have been worn out in his defence. I will not, however, be outdone in the contest. I will revive the charge, as often as he shall choose to repeat the defence; nor will I cease to expose his oppression to the public, until I have an opportunity of arraigning him before another tribunal."

Mr. Jefferson in his pamphlet had expended much laborious research to show that by the French law alluvion belonged to the Crown. In the course of this part of the discussion he found himself at variance with the published arguments of his professional associates, — men profoundly learned in the French law. In the answer, Mr. Livingston, after exhausting the history of the subject, and showing that in the year 1786 the King of

* Mr. Peter S. Du Ponceau.

France had, by letters-patent, publicly disclaimed any title "to the alluvions, accretions, and deposits formed on the banks of navigable rivers," and acknowledged that they "belonged to the proprietors of the soil adjacent to the shores," concludes this head of his argument and approaches another thus: —

"After this formal recognition of the principles I contend for by the highest judicial and legislative authority in the kingdom; after this solemn disavowal of the regal rights set up by my adversary; after the publicity given to the decision at a time when, if I mistake not, Mr. Jefferson filled a high station in the capital of France,—it is a little extraordinary to hear him assert so positively that, since the edict of 1793, no doubt could exist as to the laws of France on the subject of alluvion, and that those laws vested them in the King. The pertinacity with which this opinion is adhered to is the more extraordinary as the position was abandoned by two of his fellow-laborers out of three in the same cause, and by the two who, being educated in France, were, without any disparagement to the acknowledged merit and talents of the third, better qualified to determine a question of French law than any gentleman whose professional education was entirely American. The solicitude of our author to obtain the support of his two colleagues on this important point is truly ridiculous. In a labored note, he tries to coax Mr. Moreau out of his opinion, or to persuade the world that 'he is not decided' in pronouncing it; and his extracts now show me why this *mémoire* of Mr. Moreau was never suffered to meet my unhallowed eye. The Secretary of State once (I believe inadvertently) mentioned its existence; but on my expressing a desire to see it, changed the conversation, and I found there were reasons why it was deemed improper to communicate its contents.

"The decided manner in which his other advocate, Mr. Thierry, had opposed his favorite doctrine, gave Mr. Jefferson no hope of soothing or converting him; and his arguments on this point most assuredly created no desire to enter the lists with so formidable an adversary.

"The President of the United States, therefore, skulks out of the ranks to carry on his irregular attacks, and then rejoins the standard of his leader, with a compliment which he hopes will disarm his wrath and secure forgiveness for his desertion."

The following is the mode in which Mr. Jefferson's distinction between rural and urban possessions, with respect to property in alluvial accretions, is answered:—

"We next come to a position of which Mr. Jefferson seems peculiarly enamored, namely, '*that the right of alluvion accrues only to rural, not to urban possessions, and, therefore, that had the Batture been an alluvion, and governed by the Roman instead of the French law, the conversion of the plantation of Gravier into a suburb made it public property.*' These words, I should suppose, mean that although Gravier's plantation had been increased by alluvion to a very considerable extent, prior to his laying it out into a suburb, the very act of dividing it into lots vested in the public all that part which had been created by alluvion,—an assertion which he leaves unsupported by either argument or proof, and which modifies his position in a manner that renders it entirely inapplicable to the present case. This position is, 'that the Roman law gave alluvion only to the *rural* proprietor of the bank, *urban* possessions being considered as *prædia limitata.*' Now, admit this wild assertion to be true: does it follow that the alluvion created before the ground became a city belongs to the public? On the contrary, does not Mr. Jefferson himself allow that it is an accessory, and that

the accessory must follow the principal? If this be so, the question is at an end; because the ground on which my house stood, and from which I was driven, was formed long before the existence of the suburb.

"But the position is not only inapplicable, but unfounded. Let us examine how it is supported. The Institute, in defining this species of property, or rather this mode of acquiring it, says, 'What the river has added *agro tuo* by alluvion is thine;' the Digest uses the same expression. Now *ager* in Latin, and ἀγρὸς in Greek, mean a *field.* Land in the city is called *area*, a lot. Therefore you must show, says the conclusive and most learned reasoner, that your alluvion accrued to a *field*, or you are not entitled to it; because there are no *fields* in a *city.* I must answer this argument, or it will be supposed that this very learned page has silenced me; and many an honest citizen who understands no Greek, but 'honors the sight' as much as Boniface did 'the sound of it,' will suppose some unanswerable argument lies hid in the cramp characters that adorn it. Seriously, then, let me tell my learned adversary, first, that *ager*, in Latin, means not only a field, but the generic term *land*, and that, too, situate in a village, and, to take away all cavil, in a *city.*"

Here, after quoting some plainly conclusive Latin authorities as to the meaning of the word *ager*, and after following closely for some time several philological considerations urged in the paper of the ex-President, the answer proceeds: —

"But I think in the reasoning to which Mr. Jefferson refers me, and which he makes his own, it is said that there are *prædia urbana* and *prædia rustica*, city estates and country estates, and that I show nothing unless I show that the right of alluvion accrues to the former by *name;* but surely, when I show that it accrues generally

to *estates*, to *lands*, to the *soil*,—when I show that every term used to express an interest in real estate is employed on the occasion,—I show enough to throw the burthen of any exception upon my adversary. I might say to him, I have shown that this right accrues to the *ager*, to the *fundus*, and the *prædium;* and I have shown, by the most approved definitions, that all these terms include lands in the city as well as in the country. If the law, however, does not apply to city property, do you show it. There is, Sir, I know, the *prædium urbanum* and the *prædium rusticum;* but permit me, most learned civilian, to suggest to you that there is also the *servus urbanus* and the *servus rusticus*, and that you might as well tell me, when I cited any one of the thousand laws on the subject of slaves generally, that it did not apply to the town slave, because he was not particularly named;—nay, you might make the same exception to the country slave, and thus show that what applied to all generally, could not affect any in particular. And if it were not too presuming, I might add, you have made a slight mistake in supposing that *prædia urbana* were always situate in a city; the name, Sir, has misled you. Before you write books on the civil law, and, above all, before you rely so much on your knowledge of it as to strip a citizen of his property, it would be well to study and digest its principles. Its maxims are,—'*In eo quod plus est semper inest et minus;*' '*In toto et pars continetur;*' '*Semper specialia generalibus insunt.*' Ponder on these, learned Sir, and do not insist that a bequest of horses, generally, does not include those of the testator because they happen to be white horses, black horses, or even pied horses.

"But if you will not be content, without a positive law, that the right of alluvion accrues to property in the city,

as well as the country, I believe, Sir, I must gratify you. If it had not been, however, for the bad habit you have fallen into, of being learned at the expense of others, of repeating quotations without looking at the text, you would have saved me this trouble, and yourself the mortification of repeating a triumphant challenge to produce an authority which you would then have seen was under my hand.

"You have repeated, after those who went before you, the quotation, '*In agris limitatis jus alluvionis locum non habere constat;*' had you read the rest of the same law, you would have found the very authority you challenge me now to produce: '*Et Trebatius ait, agrum qui hostibus devictis ea conditione concessum sit ut in civitatem veniret, habere alluvionem,*' 'And Trebatius says, that land conquered from the enemy, and granted on condition that it shall be included in a city, is entitled to the right of alluvion.'

"I repeat that I need not have produced this authority, and that nothing but my desire to oblige you, Sir, has induced me to submit it to your inspection; but after this, I hope we shall not have a third repetition of the challenge. Such might be my address to my erudite adversary, if I were not restrained by respect for the conviction he expresses of the soundness of the principles I am forced thus reluctantly to attack.

"The common law of England is next resorted to; and I am again challenged to produce a decision under that law, where the right of alluvion to *city property* has been allowed. Having shown one under the law which governs the country in which the lands lie, I have, I think, done enough; but I am resolved that none of the wretched shifts resorted to shall go unexposed, and that the President of the United States shall not have it to

say, that his conduct would have been legal, had the land been in England, and he, King of that country.

"First, then, I answer this appeal to the common, as I did that to the civil law, by giving the general rule, and calling on my adversary to show the exception, if it exist. Blackstone, speaking of this species of property, even in the strong case of alluvions of the sea, says, 'And as to lands gained from the sea, either by alluvion, by the washing up of sand and earth, so as in time to make *terra firma*, or by dereliction, etc.,—in these cases, the law is held to be, that, if this gain be by little and little, by small and imperceptible degrees, it shall go to the owner of the land adjoining.' The same law, he says a little below, applies to a river. Now as land, in the English law, means every species of soil, whether urban or rural, as a lot of ground does not cease to be land although it be situate in a city, I should suppose this general expression would be sufficient to show that the King would have no right to the property in question, were it situate in England. But to this Mr. Jefferson gives a most conclusive answer: 'In towns, the whole bank and beach being necessary for public use, the private right of alluvion would be inadmissible.' How does it happen, then, that in every city in the United States the shores and wharves are private property, except in the cases where the legislature or the King may have granted them to corporations, in which cases they possess and use them as individuals? If they were necessary for public use, they could never be private property; if the private right of alluvion were 'inadmissible,' it would never exist. But *necessary*, in Mr. Jefferson's vocabulary, means *useful*, and *the public* means those who administer its affairs. Whatever, therefore, is useful to promote the popularity of the President, is necessary to the public; and it is in this sense

only that his allegation can be reconciled to truth. The question of the right of alluvion to town-lots has arisen and been decided in the United States. The lands were situated in Newburyport, and the case is reported in Tyng's Massachusetts Reports, vol. iii. p. 353, Adams *versus* Frothingham. It was decided according to the common law of England, not by virtue of any State regulation; and the judgment affirmed the right of alluvion to the proprietor of a town-lot.

"But the whole body of American judges are proscribed; their decisions are no rule for Mr. Jefferson. 'Special circumstances,' he says, 'have prevented attention in America, either to the law or the breach of it.' What those circumstances are which would make learned and upright judges neglect the law, or enlightened magistrates disregard the interests of the public, he has not deigned to explain. But, be it so. American decisions shall pass for nothing; there are no bounds to my complaisance for my adversary; everything shall be yielded to him; titles in Louisiana shall be decided by the laws of England, not as those laws are understood in the United States, as they are expounded by the ignorant men who preside in their courts, but as they flow from the fountain-head in good old England itself, and not even there as they are given to us by such inaccurate writers as Blackstone or Coke, who deal in general principles, but we will look for *decisions*, and those relating not only to land, but to land in a *city;* nay, more, to land in a *port;* and, to bring the case still nearer home, to a beach which is covered, not once every six months, but twice every day, with the water, not of a river, but of the sea, and on which *ships*, not Kentucky boats, ride at anchor. Thus far I shall be enabled to go, but I candidly confess I can get no farther; and if it should be

objected to me that my property is chiefly loam and vegetable soil, and that, in the case I cite, the soil was sea-sand, that my alluvion was produced by fresh water, and the English one by salt, or any other distinction equally important should be raised, I confess that I must give up the cause in despair, and avow myself vanquished by the superior resources of my opponent. Let us, however, do what we can," etc.

Some animadversions of Mr. Jefferson upon the supposed dangers of Mr. Livingston's enterprise are thus met by the latter: —

"This leads to the fourth head of defence, which supposes the property mine, but alleges an use of it inconsistent with the laws of the Territory. The documents to which I have before referred show how ill-founded is this charge. But suppose it true, what justification does it form for Mr. Jefferson's interference?

"He has shown that if I were guilty of these attempts to drown and poison the city, there were laws not only to punish, but restrain me. The ancient and modern provisions he has cited authorize the judge, on the complaint of any individual interested, to issue his injunction against the erection of the work.

"He has not only cited the law, but shown that proceedings were had under it; he has told the public that my works were presented by a grand jury as a nuisance. Why was not that presentment followed up and tried? I could then before a jury of my country have shown the falsity of all these charges. If they were true, a verdict, which could have been had in ten days, would have put a stop to my 'aggressions' as effectually as the mandate of the President, and I believe every one will allow, with rather a greater attention to the forms of law. That a President of the United States is required

or even authorized to watch over the police of the rivers or the cities in the Territories; that he is to abate the nuisances in the suburbs of New Orleans, and determine the proper height and extent of the levees in the Mississippi; that he is to guard against the accumulation of the 'putrefying mass with which I was to raise up the foundation of my embankment,'—appears to me rather derogatory to his station and incompatible with his other duties. I had thought that they fell within the province of a high constable or a scavenger; that the first magistrate of our nation had certain duties assigned to him by the Constitution, which he was to perform without interfering with the internal regulations of Territories and States; and that when he was authorized to ask the opinion of the great officers of the government, it was not intended that he should degrade them by deliberating on the propriety of filling up a mud-puddle or pulling down a dike in New Orleans.

"'*Nec Deus intersit nisi dignus vindice nodus*,' 'Do not let Jupiter appear until his thunders are necessary' is a maxim, true as well in the common prose transactions of real life, as in the fictions of poetry. If my works were a nuisance, a court of quarter-sessions, with its sheriff, its constables, and parish jury, was a much more appropriate machinery, than the President of the United States, assembling the council of the nation, drawing out its military force, and launching his thundering mandate at my unprotected head.

"There is a real or affected ignorance of the first principles of our government which runs through all this division of Mr. Jefferson's argument, that is degrading to the author in the first hypothesis, insulting to his readers in the second. The bed of the river and its shores belong, says his argument, to the public. The

sovereign is the guardian of this public right; and though the soil of the bank may belong to an individual, it is the duty of the sovereign to take care that this right of private property yield to the public use. To this point he has cited Domat, p. 60. But in our government who is the sovereign? The executive head of the federation? or the local government, the State or Territorial sovereignty. No man who understands the first rudiments of our Constitution can hesitate on these questions. Again, of the local government, which branch? Every infraction of a public right is a public offence, and all these are to be punished by the intervention of the Judiciary, a branch wholly distinct in our government from the Executive, but which Mr. Jefferson has confounded with it in his principle, and has degraded by his practice.

"The Territorial government, for all the purposes of domestic rule, is as distinct from and as independent of the General Government, as is that of the States. By the Ordinance of 1787, which at the period of the transaction formed the Constitution of the Territory of Orleans, there was a governor with executive power, a legislative council and house of representatives, with 'authority to make laws in all cases for the good government of the district, not repugnant to the Ordinance,' or Constitution, and a judiciary regularly organized. In short, a local government complete in all its parts, excluding as much any interference of the Federal Government, as those established in the States. The care, then, of all these public rights in the Territory of Orleans belonged exclusively to the proper branch of the local government, and the interference of the President of the United States was as unconstitutional under that pretence as it would have been in New York or Massachusetts; and

he might as well order the Marshal to call out his *posse* to destroy the weirs and floating nets in Hudson's River, or to cut down the wharves that project into its channel, — he might as well, I repeat, order the demolition of Long Wharf, and direct the garrison of the Castle to hold themselves in readiness for another Boston Massacre, in case of resistance. He would be quite as justifiable in doing this as in doing what he has done; and he might use the same arguments with as much force in the one case as in the other.

"That the right of interference resided in the Territorial, not in the General Government, is in effect acknowledged by our author himself, who tells us that 'surely it is the territorial legislature which not only has the *power* but is under the *urgent duty* of providing regulations for the government of this river and its inhabitants,' etc. In the same page he tells us that 'the governor and *cabildo* (municipal council) seem to have held this pretorian power in Louisiana, *as well as that of demolishing what was unlawfully erected;*' and that 'the act of the legislature, without taking the power from the governor and city council, gives a concurrent power to the parish judge and jury,' etc. Here we have an express acknowledgment, nay, more, a strong desire to establish a right in the Territorial legislature to make laws on the subject in dispute, and in the Territorial executive to carry them into execution, — not only to prevent the erection of any nuisance, but to demolish it if erected. If, then, this right both to legislate and execute was vested in the local government, what excuse has the President of the United States for his interference? In what part of the Constitution does he find this concurrent right? What confused ideas, then, I repeat, must that man have of government who believes in this jus-

tification! What contemptuous ideas of the people to whom it is addressed must he entertain, who, knowing its fallacy, thinks he can impose it on their understandings!

"But supposing my works a nuisance, and the President of the United States to have the power to abate it, has he done so? Is that the act of which I complain? Neither the one nor the other; — his order is not an order to demolish my works, to fill up my canal, to pull down my house, but 'to *remove* ME *from the possession of the land*,' — and this was accordingly done; the canal which was to poison the city by its pestilential vapors was suffered to remain, and is resorted to at this day, although nearly choked up for want of cleaning and repair, as a more commodious and safe harbor for boats than any other near the city. The levee that projected into the river, and was to 'sweep away the town and country in undistinguished ruin,' was not demolished by this vigilant abater of nuisances; it was left to the operation of time to effect. The house which impeded the navigation of the river and interfered with the public right to its banks, was transferred to the possession of the city of New Orleans, and for several years was occupied as their guard-house. So that, if the facts alleged in Mr. Jefferson's justification be true, and it was his duty to abate the nuisance, he has totally neglected it; he has suffered the nuisance to remain, but has dispossessed the owner of the land on which it was erected, — a new mode of procedure, and somewhat inconsistent with that eager desire to destroy these dangerous works, with that active zeal which could brook no delay to consult the forms of law. The truth is, that this idea of the abatement of a nuisance is a complete afterthought, never alluded to in the act or in any of the early stages

of justification, suggested now by a faint hope to elude fair inquiry, and made of such stuff as are the arguments of a Newgate solicitor in defence of a felon caught in the *manour*. To hide the threadbare weakness of this argument, it is glossed over with a mock-heroic declamation, in which pestilence and fever, death, destruction, ruin, and inundation, frighten the reader in every line, and in which he has reproached me with being afraid of submitting my cause to a jury. Mr. Jefferson reproaches me with this! — he whose constant care has been by demurrers, by pleas to the jurisdiction, by every device that chicane could invent, to avoid this species of investigation; he whose steady phalanx of friends in Congress defeated every attempt to submit the cause to any species of trial! He utters this reproach to me! who for five years have been constantly engaged in the painful, unavailing task of solicitation for this *or any other trial.* Such an insulting disregard to propriety and truth forces me from the moderation with which I wished, injured as I have been, to conduct the controversy; and the close of the passage now under review is calculated to inspire sentiments not only of indignation, but of horror.

"My life had been more than once threatened for exercising my legal rights. Emboldened by the idea of executive protection, excesses were committed in my case which the love of order natural to the people of Louisiana had in every other instance avoided. The good sense of the people had got the better of this temporary frenzy; the necessity of submitting to the laws was perceived and acknowledged. Mr. Jefferson's friends must have informed him that these ideas began to prevail, and that if by a decree of the court, or in any other legal manner, I should recover my possession, there were

now no hopes that I should be deprived of it by a mob. This was a prospect too mortifying to be endured; the people must be excited, — the spirit of 1807 must be revived, and though the danger never existed, though if it existed it was long past, it must be painted in glowing colors, the vengeance of popular fury must be directed at my head; an expression in one of my letters which, it was thought, would render me odious to the people, must be culled with malignant care; their conduct in opposing the laws must be spoken of with complacency, while mine in daring to complain is held up to the severest animadversions; and when by these arts a proper spirit is supposed to have been excited, they must be plainly told, that though their laws will not allow them to burn me alive, it is a punishment mild enough for my offence!!

"'What was to be done,' says Mr. Jefferson, 'with such an aggressor? Shall we answer in the words of the imperial edict? *Let him be consumed with flames in that spot in which he violated the reverence of antiquity and the safety of the empire; let his accessaries and accomplices be cut off*,' etc. 'Our horror,' he adds, 'is not the less because our laws are more lenient.' I ought perhaps only to laugh at the folly of this rhapsody, and remind the author that the flames were prepared by the Roman law for the *destroyers* of the dikes of the Nile, not for the one who erected them, — I ought to ask him good-naturedly to look at the title of his own law, and determine which of us deserved the stake. But I confess that the mirth naturally excited by the absurdity is somewhat repressed by horror at the wickedness of this attempt.

"On these facts and on this law, the late President says, '*We* were called, and repeatedly and urgently called,

to decide.' As I do not suppose a republican magistrate could assume the ridiculous expression of royalty, by speaking in the plural number, I must suppose that he has fallen into it by reflecting on the various capacities in which he was thus urgently called on to act. As *legislator*, he was to make a new law to fit the circumstances of the case; as *judge*, he was to apply it to those facts, which, as a *juror*, he was to ascertain, and to pronounce that sentence, which, as *executive officer*, he was himself to carry into effect; as *President*, he was to reclaim the lands of the United States; as *Commander-in-Chief* of the armies, a sufficient military force was to be prepared to overawe opposition; as *Mayor* of the city of New Orleans, he was to enforce its rights against the decrees of the court; as *high constable*, he was to abate nuisances, and as *street commissioner* to remove the putrefying mass that threatened the health of the city. We ought not to be astonished that an officer who thought himself obliged to act in all these capacities should speak as if he were more than one, nor that, having in this instance invested himself with all the characteristics of despotism, he should have assumed its style."

The following is part of Mr. Livingston's review of Mr. Jefferson's account of the cabinet deliberations and decision to act in the matter: —

"The task, then, undertaken by the President and his counsel was a judicial one in the strictest sense of the word, and they applied themselves to it with some degree of form. A preliminary question to be decided by a court inquiring into a case is, By what rule are we to decide? What law is to govern the case? And we accordingly find that this was the first object of attention with our new tribunal. 'The first question occurring,' says Mr. Jefferson, 'was, What system of law was to be

applied to them?' They adopt the laws of France, and then they, or Mr. J., (for it does not clearly from his style appear which,) reason through forty pages upon the law and the fact, and having clearly settled both in their own minds, they are convinced of the guilt of the accused, and we have the important inquiry in the criminal cause: 'What was to be done with such an aggressor?' Having, with a humanity for which I can never be too grateful, determined that though he richly deserved it they would not burn him alive, they proceed to declare what sentence shall be passed on the civil side, or, to give Mr. Jefferson's words, 'The question before *us* was, What is to be done? What remedy can we apply authorized by the laws, and prompt enough to arrest the mischief?' The points of law and of fact determined by this tribunal are then resumed and stated with precision, and we at length come to the decree, which is thus rendered: 'On duly weighing the information before us, which, though not so ample as has since been received, was abundantly sufficient to satisfy us of the facts, and has been confirmed by all subsequent testimony, we were *all* unanimously of opinion that we were *authorized* and *in duty bound*, without delay, to arrest the aggressions of Mr. *Livingston* on the public rights and on the peace and safety of New Orleans, and that orders should be immediately despatched for that purpose, restrained to intruders since the passage of the act of March 3d.'*

"Here is the sentence, and I am mistaken if a more formal one ever received the sanction of a court.

* The act of Congress here referred to, and which Mr. Jefferson relied upon as a distinct ground of justification for his measures against Mr. Livingston, was a general statute (Chapter XLVI. of the laws of the session) designed to protect the public lands from encroachments by the class since called "squatters," and its passage was several months before the question of title to the Batture was presented to the government.

"First, we are told that they duly weighed the information *before them*, and though, to be sure, it was not so ample as has since been received, yet it was abundantly sufficient to satisfy them of the facts. Here, then, is a decision in form of the facts in the case.

"But, lest any doubt should be entertained of the jurisdiction of the court, an elegant pleonasm is introduced to mark this feature strongly, and show that no doubts were entertained, at least by the judges, on this subject. 'We were *all unanimously*,' says the classic Jefferson, 'of opinion that we were authorized and in duty bound to arrest the progress of Mr. Livingston.' Here the offender is pointed out, and his double aggression distinctly marked: he is found guilty of offences against the *public rights* and *the peace and safety of the city of New Orleans*. This is the conviction; in the sentence, I confess, there is more obscurity than I should have expected from the pen of the enlightened chief of the tribunal. 'Orders,' it is said, 'should be immediately despatched for that purpose,' (namely, to arrest the aggressions of which I had been found guilty). What those orders were, in what manner the evil was to be arrested, does not appear by the record; they had confidence in the President, perhaps, and left this to his discretion; but the obscurity is cleared up by the execution which immediately followed the sentence. It consisted of an order from the Secretary of State to the Marshal, to remove all persons from the Batture who had taken possession since the 3d March, 1807. The civil power is to be first employed, and in case that should prove insufficient, the Secretary at War, another member of the court, orders the military force to carry it into effect. The sentence was executed; and the unfortunate offender, thus legally, fairly, and constitutionally condemned, was reduced from affluence to poverty,

from the prospect of independence to a life of solicitation and labor."

In point of dignity and temper, the private citizen, in discussing what he regarded as an enormous personal injury to himself, maintained throughout his argument a clear advantage over the late chief magistrate, giving a voluntary account of his management of a high governmental trust. The latter, in his paper, frequently stepped aside to indulge in such irrelevant assertions as that Mr. Livingston was "an eagle-eyed adversary," a "greedy individual," governed by "the delusions of self-interest," one who "could not suddenly forget the flesh-pots of Egypt, even in the new land of Canaan;" that he was engaged in "an atrocious enterprise," and was leniently dealt with if not burnt to death; that his claim was "too frivolous to occupy the attention of Congress," — and the like. His adversary, on the contrary, through all the sarcasm and severity of his answer preserved a steady pertinence to the subject of his complaint, and adhered to the forms of politeness in dealing his heaviest blows. With regard to the new land of Canaan, he declared that he knew as little of its flesh-pots as the late President seemed to do of its laws. "But," he added, "I think that when searching the Scriptures for unmeaning allusions, Mr. Jefferson might have discovered some precept to arrest him in the unholy career of first oppressing a fellow-citizen whom he was bound to protect, and then adding mockery to his other outrages." While his claim was before Congress, he had, on the eve of an adjournment, as a last means of securing attention, addressed a circular letter to the members of that body, in these words: —

"Sir: The peculiarity of my situation will justify me

in renewing to you, individually, the appeal which has repeatedly been made to the honorable body of which you are a member. Without entering into any other circumstances of my case, thus much is without dispute: that without trial or any judicial process, I have, by military force, been driven from the possession of a real estate of which I was the *bona fide* purchaser, for a valuable consideration, from a person in possession, and under a title recognized to be good by the sentence of a competent tribunal, judging in the last resort; that I am an American citizen, and have never done anything to forfeit the rights to which that quality entitles me; and that the United States being in possession, I have no remedy at law.

"Whether the law of 1807 authorizes the proceedings against me or not, or whatever were the motives of those proceedings, my case is equally one of primary public concern, and is that of every individual in the community, for no one has any legal security which I had not. If the law authorizes such proceedings, it is unconstitutional; if it do not authorize them, the misconstruction ought to be remedied. I might, therefore, Sir, without presumption, *claim* that interference, as a matter of the highest public duty, which, in my present situation, I am content to solicit as a private favor. Deprived of a fortune that would place me in a state of independence, I am, by the act of the government, reduced to poverty, and exposed to the pursuits of creditors, whose patience will, I fear, be exhausted by further delay; twice obliged to leave my profession and place of abode, my means are exhausted, and my business lost. Under these circumstances, Sir, I am persuaded that you will not suffer the trifling inconvenience of a few hours' delay to balance the utter ruin of a fellow-citizen, who cannot trace his

misfortune to any imprudence of his own, and who only asks that *fair trial* which the Constitution you have sworn to defend secures indiscriminately to all.

"EDW. LIVINGSTON.

"23d June, 1809."

This manly and pathetic appeal the ex-President, in his pamphlet, condescended to make the topic of a jest, which lacked the poor excuse of being pointed. "A most ungrateful complaint," it runs; "for had he not been removed, he must at the time of writing this letter have been, as his estate was, some ten or twelve feet under water, the river then being at its greatest height." To this Mr. Livingston responded by setting out the letter in full, and appending only the following commentary:—

"If there be any man who can join Mr. Jefferson's merriment at the terms of this letter, I do not envy that man's enjoyments, and would much rather be the sufferer under the wrongs there detailed, than the one, however high his office, who could first inflict and then deride them."

Every argument and suggestion of his antagonist receives distinct notice in the answer of Mr. Livingston. Whatever fact or inference he cannot claim to be in his own favor, he admits with a dry and robust candor. He approaches a conclusion in the following sentences:—

"The task I had imposed on myself is now finished, and I commit, with satisfaction, my cause to the public. It is not one of mere interest, either to me or to my adversary: as he has managed it, the question involves considerations of higher moment to us both: I am an intruder on the public, or he an invader of private rights.

The only true inquiries were, Was the land in question the property of the United States? Had the President a right to seize it if it were? A dignified defence would have been confined to the support of an affirmative answer to these propositions. Innocence would have rejected the doubtful advantage to be derived from even a just attack; integrity and honor would have disdained the aid of unjust accusations, however plausible; magnanimity would have scorned the effect of an appeal to popular prejudice; — but in this case we look in vain for these results."

Here follows a swift and close recapitulation of the main points of the answer, which ends thus: —

"I now take my leave of Mr. Jefferson. In my answer, I have confined myself to his book. Notwithstanding the strong temptations which assailed me almost in every page, I have strictly kept within the boundaries of a just, (and, I think, considering the wanton attack,) a mild defence. My future conduct will depend much on that of my adversary. I shall continue to reply to every argument that may be addressed to the public on this subject. Knowing that my cause is good, I do not despair, even with humble pretensions, to make its justice appear. For this purpose, I have always courted investigation; I should have preferred it in a court of justice, but do not decline it before the public.

"Though some may condemn me only on hearing the name of my opponent, there are many, very many, in the nation who have independence enough to judge for themselves, and the ability to decide with correctness; to such I submit the merits of a controversy which has been rendered interesting as well from the constitutional as the legal questions it involves, and on which Mr. Jefferson has, by his management of it, staked his legal, his po-

litical, and almost his moral reputation. That he should not have understood the nature of my title and the different foreign codes on which it depends, is no reproach; that he should have acted at all without this knowledge must surprise, that he should have acted forcibly, must astonish us; but that he should persevere in the same pretence of understanding the law of France better than gentlemen bred to it from their childhood, and who, engaged on the same side of the controversy with himself, have abandoned the ground he has taken,—that he should obstinately justify an invasion of private property, in a manner that puts it in the power of a President with impunity to commit acts of oppression at which a King would tremble, — that he should do all this, and still talk of conscious rectitude, must amaze all those who look only to the reputation he has enjoyed, and who do not consider the inconsistency of human nature, and the deplorable effects of an inordinate passion for popularity."

To show the habit of Livingston's mind in searching for illustrations pertinent to the subjects which occupied his attention, I may relate this anecdote. His answer to Mr. Jefferson having been finished and retouched with care, during one of his visits to the east, the manuscript was given to the printer on the eve of his departure for home. His journey was by stage-coach through Pennsylvania to Pittsburg, and thence by the rivers. The task of revising the press he left to the kindness of a friend,—Mr. Du Ponceau, of Philadelphia. To the latter he wrote, on reaching Pittsburg:—

"How will this note do to that part of the work which refutes the idea of the land covered by the inundation being the bed of the river? It escaped me when I was with you.

"'Although I do not think the poets the very best authority in a juridical controversy, nor am I disposed to imitate Mr. Jefferson, when he quotes lines out of *St. Evremont* to prove the legal signification of a French term, yet *Virgil* has, in one line, so distinctly marked the difference between the *bed* of the river and the *fields* which it inundates, that I cannot resist the temptation of quoting the passage: —

"aut pingui flumine Nilus,
Quum refluit *campis*, et jam se condidit *alveo*."

ÆNEID, l. 9, v. 31.'"

The suggestion was attended to by Mr. Du Ponceau, and the Virgilian citation appeared in the work, along with the other authorities which the author had brought together in support of his various positions.

The passages above transcribed are but so many bricks which fail to convey any adequate notion of the architecture of the work from which they are taken. That, to be appreciated, must be read with the paper which called it forth. Of it the learned editor of the periodical in which both productions appeared together declared, at the time, that "to us it appears to be one of the most masterly performances that ever came from the pen of a lawyer or scholar in any country." And this strong praise the learned reader of the present day will not think excessive or injudicious.

At the period when these arguments were published — fifty years ago — it was not easy, as it now is, to draw a general popular attention to such questions as they discuss, and the public to which they were really addressed was a more select one — composed more exclusively of professional and learned persons — than the public to which similar appeals would at present be made. Thus the conduct of Jefferson on this occasion escaped in a

good degree that universal notice and exposure which, in our day, it would have been sure to receive. But the recognition which was accorded to Livingston by some of the best and first men of his time, both as to his rights and his manner of asserting them, must have formed at least some compensation for the wrong he had suffered. The following letter he received from his former fellow-student, then Chief-Justice of the State of New York, soon afterwards its Chancellor, and finally the Blackstone of American law: —

"*Albany*, May 13, 1814.

"DEAR SIR: Your favor of the 9th ult. was just now received, and I am sensible of the honor done me by the value which you are pleased to attach to my legal opinions. On all questions depending on the civil law my researches are very imperfect, and I know that you are infinitely my superior; and if I had any doubt of your title to the batture after reading Jefferson's pamphlet, your reply had completely removed it. I purchased the reply as soon as I heard it was to be procured, and before the one you was so kind as to intend for me came to hand, and a more conclusive argument I never read. Permit me to assure you that I have sympathized with you throughout the whole of the controversy, as I took a very early impression that you was cruelly and shamefully persecuted, and that, too, by the executive authority of the United States. I am more and more confirmed in this opinion, and Mr. Jefferson has richly merited all the reproach and indignation which your pamphlet conveys. I never doubted in the least (it would have been impossible) that his interference summarily under the act of Congress was unauthorized; but as I read but once his book on the title, and did not examine his authorities, but

assumed them to have been fairly cited, I was left in perplexity and doubt, and had not leisure to sit down to a reëxamination of the subject. When your reply came, I read it eagerly, and studied it thoroughly, with a re-examination of Jefferson as I went along; and I should now be as willing to subscribe my name to the validity of your title and to the atrocious injustice you have received, as to any opinion contained in Johnson's Reports. This last pamphlet is the ablest work with which you have hitherto obliged the public, and it gives you new and increasing claims to their consideration.

"I always recollect, with pleasure and tenderness, the friendship of former days, and I cannot omit any opportunity to assure you of my constant esteem and regard.

"I am, dear Sir,

"Yours, sincerely,

"JAMES KENT.

"EDWARD LIVINGSTON, Esq."

The student of our political history cannot learn from even the most voluminous of Mr. Jefferson's biographers that he ever committed any act of such practical and thorough despotism as we here see that he did, and it may be difficult for ardent youthful admirers of the illustrious teacher of democracy to believe the fact. Yet no fact can be more certain than that the complaint of Mr. Livingston was, in substance, altogether well founded and true. It would require but few such acts to make even the name of Jefferson stand in history for a character such as Livingston was tempted, in an eloquent passage of the work just considered, to depict him, "the magistrate of a free people, playing the Tartuffe of liberty, — adoring it in theory, but in practice violating its most sacred principles." The truth is,

that Mr. Jefferson, throughout his tract, — now published with his works, — betrays a sensitive desire to convince himself that he had not, in this instance, done scandalous violence to the great principles of which he is the popular exemplar; and if he had succeeded in this endeavor, he would not, a few years later, have entertained nor testified the exalted respect for his adversary, proofs of which will be recorded further on.

CHAPTER IX.

DISAPPOINTMENT AND AFFLICTION.

Temper of Mr. Livingston — Condition of Affairs, caused by the Devotion of his Time to the Batture Enterprise — Anecdotes — A Scrap of Translation — Anxiety to end the Separation from his Children — Letters of Julia — Her Death — Letters to Lewis — The latter joins his Father.

MR. LIVINGSTON'S temper proved itself perfect, throughout the controversy with Jefferson. That he felt, as keenly as any man could feel, the vexation, disappointment, and sense of injury involved in the treatment he received, is made clear by his part in the public discussion of the case. But his private demeanor was not disturbed by the struggle for a single moment. There was no gall in his heart, and no wormwood in his speech. In his family and among his friends, not a bitter word towards his principal adversary, or towards the more contemptible enemies who assisted in the work of thwarting him on this occasion, ever escaped his lips.

If he could have foreseen the tedious course of the litigation, and have chosen to abandon this property altogether and rely upon his other more regular resources, his pecuniary independence might, with good management, have been speedily accomplished. But this speculation promised at first such brilliant results, that the unexpected opposition he met gradually stimulated his exertions in defence of his rights, till his best energies had been devoted to the case so long, that, when the war broke out between the United States and England, in 1812, the question was yet in the courts, and his prin-

cipal debt was still unpaid. His resources for paying it were paralyzed by the war. Money became scarce; his property could not then be disposed of, and even ordinary professional business was much interrupted. No course was left to him but to continue, indefinitely, his labor and his patience.

All his life, Livingston was accustomed to long, daily walks, usually solitary. At this period, the close of the day was the hour he habitually set forth, and the levee was the accustomed place. One evening he was stopped by a man, in a rustic dress, who asked him if he was Mr. Livingston.

"Yes."

"I thought so. I have come to ask you to lend me a doubloon."

"Lend you?"

"Yes, it will be returned."

"But, why that precise sum?"

"Less would not serve my purpose, and more I don't need."

Having the money in his pocket, Mr. Livingston handed the coin to the stranger without further ado. The latter, as cool in his thanks as he had been in his request, went his way, saying, —

"Good night. If I live you will hear from me again."

The above incident had long been forgotten, when one morning, two years afterwards, whilst Mr. Livingston was sitting at breakfast with his family, a stranger was announced, who walked straight up to the table, and placing upon it a shining doubloon, proceeded to explain: —

"I see that you don't recognize me. I am the man you saved from ruin by lending me this amount two years ago. I owned a flat-boat; it had sunk with all its contents, and I was left penniless. I knew no one

here, and had no means of getting back to Kentucky. I calculated that it would take just that sum to carry me home. Had I not been ill, you would have seen me last year. But I am here now, and everything has prospered with me since we met."

He was asked what had induced him to think of Mr. Livingston in his distress? He replied, "Well, I can't tell exactly, only I came from Livingston County, in Kentucky, which was named in honor of the author of the speech on the Alien bill, and, having had you pointed out to me as the same man, I thought I had more claim on you than on any one else."

From another of these walks he returned home completely drenched. His, family, in surprise and alarm, exclaimed that he looked as if he had been in the river. "So I have," said he, laughing heartily. "As I was walking on the levee, I amused myself watching the progress of a little canoe crossing the river, with a solitary man rowing it. Suddenly, from some imprudent motion, the boat pitched on one side, and the man fell into the water. Evidently he could not swim. I threw off my coat, jumped in, got hold of the man just as he appeared to be sinking, and brought him to the boat, which was righted. He seized the side, and, clambering in, rowed off without looking at me,—I suppose because I had not been properly introduced to him,—and I was left to find the shore as best I could, which, loaded as I was with clothes and boots, was not so easy a matter."

A memorandum-book for the pocket, which Mr. Livingston carried in 1809 and 1810, contains, so far as I know, the latest of his attempts at poetical composition. He seems to have been by this time, and probably long before, convinced that though he had always loved and appreciated the poets, the art of lyrical writing was not

among his own gifts. The attempt to which I now refer is a paraphrase of the beginning of the fourteenth ode, second book, of Horace. It consists of only six lines, and closes abruptly with an unfinished sentence. The following is the whole of this fragment: —

"'*Eheu! fugaces, Postume, Postume.*'
"They fly, my friend, they swiftly fly,
These days we pass so sweetly;
In vain doth worth, doth virtue try
To make them pass less fleetly.

"Wrinkles and age, dear Dan, they bring,
Disease and death, the care of all"

The critical reader will perhaps think that he judged rightly in reserving for compositions of a very different species the perseverance of which a striking illustration is hereafter to be given.

During this epoch his anxiety to be reunited to his children increased from year to year. Julia was approaching womanhood, beautiful, accomplished, and amiable, and he was debarred from witnessing her daily progress. But his correspondence with her was constant. I have now before me a package of her letters, written to her father in 1810 and 1811. Some of them enclose letters to her step-mother, written in French. Towards her father, they breathe a love and respect almost idolatrous. In one of them, dated at Philadelphia, she says, "The principal reason, I believe, of my being so pleased with this city, is because almost every one here speaks of you in such high terms, and appears to take so much interest in your welfare. And, now, adieu, my dear, my beloved father; believe me that I love you most truly, most tenderly; that my whole heart is yours, except one corner of it, which is devoted to the memory of her who alone had an equal share with you in the affections of your Julia."

The mind and person of this child were impressed with a peculiar delicacy and a certain melancholy which always seemed to foreshadow an early decline. The solicitude of her father on this account became anxiety in the winter of 1813, and, in the following summer, alarm. In August, the account he received of her he considered as a summons to New York, if he would see her again. The voyage was rendered uncertain and dangerous by the state of the war. He embarked, however, by the first opportunity, on board a schooner which narrowly escaped capture, and, after an unexpectedly tedious passage, arrived safely at New York, about the middle of October. He hastened, with an anxious heart, to the house of his brother in Greenwich Street, though he was aware that the family were at their country-seat on the Hudson. After hurriedly inquiring about the family of the servant who opened the door, he asked, "How is Miss Livingston?" The servant, not knowing who he was, replied, "She was buried, Sir, yesterday." The tender father staggered under the blow, and carried its visible traces, not only upon his sad, returning journey, but for a long time afterwards. In his first interview with his wife and child on reaching home, he could scarcely speak of his grief, and convulsive sobs were mingled with the few words he uttered upon the subject. He shortly afterwards wrote to one of his sisters: —

"Do not, I entreat you, think me wanting in that affection I have always borne you, from my not writing you since my arrival. I can only trust my pen on subjects of business, and I strive to confine my thoughts to the same object. The bustle of my profession keeps me from a retrospect to which if I were to give way, I should lose myself forever."

He now felt an absolute necessity for the companion-

ship of his son, a youth in all respects worthy of his affection and care. The latter had returned before 1810 to New York, having lived several years at the American legation in Paris. Possessing a manly character and a precocious mind, his letters and the accounts given of him by his friends had inspired his father with proud anticipations for his future. The course of his studies received constantly the paternal attention and advice. But so distant a supervision of one so dear could not satisfy the heart of the parent. In May, 1812, the latter had written: —

"My dear boy, should I be disappointed in coming out this summer, by war or other accident, it is my intention that you should join me in the fall, by the way of the Ohio and Mississippi. I shall find some friend to accompany you, who is coming that way; you shall pass the winter here; in the spring we all return together, and from that time we shall not part any more. I learn with great pleasure, my dear son, that all your relations are pleased with your manners and your progress. Do they flatter me when they say so? I hope not; I believe not; if they do, it depends only on you to make their flattery truth."

I here transcribe in full three letters of the father to the son, written at this period: —

LETTER NO. I.

"*N. O.*, 26th July, 1812.

"Your letter, my dear boy, of the 1st of June is just received, and it gives me some uneasiness to find that none of those I had written to you before that have come to hand. Of two I had sent since, one has been returned to me, as the vessel was stopped at the Balize by the declaration of war, and the other is probably taken.

Our communications in future must be altogether by land; and if the Indians should commence hostilities, even this will be a very precarious conveyance, for you know, I suppose, that in order to arrive here by land we must pass through several tribes of Indians. This circumstance will, I fear, prevent our meeting as soon as I expected. In the present state of things, I do not choose that you should come to me as I intended, nor can I with safety visit you. We must therefore indemnify ourselves by greater punctuality in our correspondence for the misfortunes which continue to separate us.

"All the accounts I receive from your relations are such as I wish. They speak highly of your conduct, your deportment, and your diligence. Continue, my dear child, to deserve the approbation of your friends, and you will become what it is my first wish you should be, a well informed, and, above all, a good man. Preserve a rigid, an inflexible regard for truth: it is the foundation of almost every virtue. He who always tells the truth can neither be a knave or a coward. The reputation of always adhering to it gives a respectability which neither riches nor talents can procure; whereas he who has unfortunately acquired a contrary character can neither be esteemed, loved, or trusted. Let me hear, then, when we meet, that you have never been known either from fear or any other motive to have disguised the truth, and I shall embrace you with double delight.

"I sent on some weeks since to your uncle C. a sum of money, out of which I desired him to pay you fifty dollars. It is my intention that you should dispose of this sum exactly as you think proper, with or without the advice of your friends. Every six months you shall have the same amount, so you may regulate your expenses accordingly.

"But you are by no means and on no occasion to borrow any money, or in any other way to make any debts. This direction I hope you will scrupulously attend to, not only now but throughout life.

"Your letter was fortunately fifty days in coming to me, or the prophecy of your man from the state-prison would have thrown us into consternation. The fourth of June passed away quietly; and if two thirds of the world were then destroyed, we inhabit the favored part.

"Farewell, my beloved son; may Heaven bless and preserve you.

"EDW. LIVINGSTON."

LETTER NO. II.

"*N. O.*, 14th September, 1812.

"I have just received, my dear son, your letter of the 15th of August. The last post brought me another. I am well pleased with the frequency of your letters, and with the letters themselves. Your hand is already very well formed, and your style will become more easy and elegant every time you write. Frequent translations will also have that effect. You cannot yet, I suppose, enter into the beauties of any of the Latin authors. As soon as you can, select one of the passages which pleases you most, and make a *free* translation of it. This, I suppose you know, means giving the same idea which your author expresses in different words, whereas a literal translation preserves the very words of the original. In the mean time, pursue the same course in the French and English languages, taking your favorite author in each, and selecting the passages which strike you most. Rollin is a very good book to impress facts upon your mind, but I would not have you copy his style, especially in the English translation; I would have preferred your getting

it in the original; and, since you are making a collection, I advise you never to purchase, or even read a translation, if you can get the original. I want to know your taste. Do you read poetry or prose with most pleasure? and of poetry which do you like best, the French or English? Which is your favorite author? Let me know all this when you write, and particularly what is your course of study and the division of your time. I cannot repeat to you too often that method is as important as application. Have a fixed time for each study and pursuit, and do not let them interfere with each other. You are at an age now, when, with an ardent desire to learn, you may make yourself master of anything. Without this you will never learn anything, for I do not call learning, getting a slight, parrot knowledge of any subject or science. Learn what you undertake thoroughly; never be content while there is any one who knows more of it than yourself; and remember you are to do this yourself. The best masters can only point out the road, — you must travel it yourself; they may, indeed, remove difficulties that might otherwise stop you, but, after all, they cannot carry you, — you must march through on your own legs. I enclose letters from your mamma and little sister; the latter entreats that you will answer without delay. It is her very first effort, and she would be dreadfully mortified if you were to neglect her. God bless you, my dear boy!

"Most affectionately yours,

"EDW. LIVINGSTON."

LETTER NO. III.

"March, 1813.

"MY DEAR SON: I learn with very great affliction of the death of your cousin H. and the increased illness of

your uncle.* They are calculated to teach us that neither youth, talents, or fortune, can secure happiness here. The innocence and filial affection of the one has already secured to him that reward which the many virtues of the other will prepare for him whenever he is taken from us. I pray Heaven, that, notwithstanding appearances, this may be long deferred, and that he may yet live to multiply those good acts and services to his country which have endeared his name to all those who wish its prosperity. The difficulties and dangers of travelling by land have increased so much that I must defer my return until the steamboats are established from this up the Ohio. The one employed from here to Natchez will make the experiment in about a month. Should her voyage succeed, of which I have little doubt, I shall take passage in her on the second trip in the month of August. My movements, however, will be very much influenced by the news I hear from Washington. At any rate, my dear boy, most decidedly you must be with me wherever I am next winter; my life wastes away at a distance from my children, and I may die before they have known me. I receive from everybody accounts which highly gratify me of your character, attention, and behaviour. Continue, my dear child, to deserve these praises, and to merit new eulogiums. Strive to *merit* more than to receive them. *Esse quam videri* is a good motto, but in the end they amount to the same. Sooner or later the world will find us out; our good qualities and talents will be admired, our faults and vices exposed, whatever care we take to conceal them; and we shall appear what we really are whenever the veil is torn off. That of merit is modesty; that of vice, hypocrisy. Wear the first always, — the worthy know what treasures it conceals; the last is subject to

* Chancellor Livingston.

be drawn aside by a thousand accidents, and the vile features beneath it are exposed to the derision of the world.

"When your sister arrives in the country, as I suppose she will shortly after this reaches you, go and spend some days with her. There is no reason why my children should be separated from each other, although I am forced to be so from them. Farewell, my dear son; receive the blessing of your affectionate father,

"EDW. LIVINGSTON."

The plan of bringing Lewis to New Orleans had not been carried out before the melancholy visit to the North, as these letters show, and the affairs of Mr. Livingston would necessarily keep him yet for some time in Louisiana. He therefore resolved to be separated from the youth no longer, and took him to New Orleans on his return. It resulted that the education of the latter was varied by an active participation in the stirring events of the close of the next and beginning of the following years, — the memorable campaign for the defence of New Orleans.

CHAPTER X.

THE BATTLE OF NEW ORLEANS.

Mr. Livingston's Services in the Campaign — His Qualifications — His previous Acquaintance with General Jackson — Meeting of Citizens in September, 1814 — Appointment of a Committee of Safety — Address of the Committee to the People — Successful Defence of Fort Bowyer — Proclamations by Jackson — His Appearance and Reception in the City — His Intimacy with Livingston — Contrast and Concord between them — Multifarious Services of the latter during the Campaign — Proclamation of Martial Law — Gallantry of the young Lewis — Dangerous Service in the Night-battle of December 23d — Pleasantry under Difficulties — Rejoicings in the City after the Decisive Repulse of the Enemy — Influence of Livingston in Jackson's Military Councils — The Lafittes — The Draughting of Reports, General Orders, Addresses, etc. — Despatch of Colonel Livingston to the British Fleet to negotiate an Exchange of Prisoners — His Detention and Return to the City with News of Peace — Arrest of Judge Hall under Martial Law — Subsequent Arraignment of General Jackson for Contempt of Court — Defence of the latter prepared by Livingston — Miniature of Jackson presented by him to his Friend — Project of a Life of the General — Mutual Attachment established between him and Livingston.

THE detention of Mr. Livingston at New Orleans, so long deprecated by him as we have seen, enabled him, in this celebrated campaign, to render services to his country the most opportune and the most signal. Indeed, there was no other man on the spot at all qualified for the very comprehensive work which he then performed. His knowledge of the people and of the situation was complete. His influence was extended among all classes. His judgment was cool, while his patriotism was wrought up so as to command all his energies and all his resources. Besides, he knew and was known to General Jackson; for, as has been already partially

shown, when they had been, eighteen years before, fellow-members of Congress, — the one a polished orator, representing the principal city of the Atlantic coast, the other an unfashionable figure from the wilds of Tennessee, — they had been political brothers and friends.

In the first place, Livingston perceived afar off the danger of invasion which threatened the city, and took active steps to awaken and prepare the people. Of this there was much need; because the very mixed population of the city, though loyal and patriotic at heart, were yet indolent, incredulous, and occupied with local contentions. On the 15th of September a meeting of citizens assembled, at which he presided and delivered a speech, producing a thrilling effect, and offered a series of resolutions, affirming a faithful attachment to the government of the United States, a full faith that the country was capable of defence, and a determination to risk lives and fortunes in defending it. The resolutions were adopted by acclamation; and the meeting proceeded to appoint a committee of nine, "to coöperate with the constituted civil and military authorities in suggesting means of defence, and calling forth the energies of the country, to repel invasion and preserve domestic tranquillity." Of the committee, Mr. Livingston was made chairman.

The "constituted civil authorities" referred to in the resolution were even more sluggish than the people at large in comprehending the public danger, and were specially engaged in paltry squabbles, unworthy even of politicians, in the absence of a better employment. Of the negative qualities of the Governor, Claiborne, Mr. Livingston had good reason to be aware, as we have seen.

The committee immediately issued an address — drawn up by Mr. Livingston — to the people of the State. It

was a concise and stirring appeal to the sentiments and motives of every class; and its effect was profound and pervading. The exertions of the committee were active and continued. On the 21st of the month, and the moment of receiving news of the successful defence of Fort Bowyer, at Mobile Point, it resolved on presenting "a sabre, with a suitable inscription and proper emblems," to Major Lawrence, the gallant and skilful commander of the garrison, whose obstinate bravery had achieved that important victory. Two clanging proclamations of General Jackson — one to Louisianians, the other to the free colored people of the State — immediately followed; and these events and appeals excited the people to a high pitch of loyalty, confidence, and unanimity.

Jackson had received his appointment as Major-General in the army of the United States in the previous month of May. He was now at Mobile, sternly resolved to defend the Southwest from invasion. With him Livingston corresponded, furnishing him with maps and information during the interval until his arrival, on the 2d of December, at New Orleans. At the head of his committee, and in company with the Governor and other authorities, he was among those who first welcomed the General on his entrance into the city. The formal address was made by the Governor. General Jackson's response briefly expressed a fierce determination to save the city, and a confident demand for the unanimous aid of the citizens in the task. His words fell without their proper effect upon most of the ears present, because the latter were unfamiliar with the English language. "This address," says Walker, "was rendered into French by Mr. Livingston. It produced an electric effect upon all present. Their countenances cleared up," etc.

The same day the General dined at the house of Mr.

Livingston, and during the remainder of the campaign the two were almost inseparable. In their general traits and qualifications two men could scarcely be more unlike; but the contrast was such as to produce between them a most perfect accord at all times, and especially in the emergency which had then brought them together. Mr. Livingston served as aide-de-camp, military secretary, interpreter, orator, spokesman, and confidential adviser upon all subjects. He furnished an opinion in writing on the question of martial law, justifying its proclamation in case of a clear necessity, but not favoring the step in any other event. This opinion retarded, for a few days, the adoption of the measure; but on the 15th of December, it was foreshadowed in an eloquent proclamation of the General, drawn up by Livingston, and on the following day, martial law was declared.

Mr. Livingston did not omit the opportunity of allowing his only and beloved son to pass through the lessons and perils of the situation. Under date of the 16th of December, the youth wrote to his aunt, Mrs. Montgomery: —

"General Jackson arrived here about a fortnight since, and I have been all this time with him, visiting the different posts. He has promised to receive me into his staff. To-morrow I am to have my appointment as engineer, with the rank of Captain or Lieutenant, I know not which. Great bustle but little alarm now prevail in town. We daily expect the enemy to make an attack upon this place. We are ready, however, to receive them. All the militia are now doing duty, and will leave town in a few days, and all do it with pleasure; they vie with each other in showing their zeal. There now reigns but one party; all are determined to oppose the enemy; and even my father, seized with a patriotic or military

ardor, has offered himself, and has been received as volunteer aid to General Jackson. The martial law was published this morning, and is now in execution. But I am writing a newspaper, not a letter."

The place assigned to the youth was that of assistant-engineer under Major Latour,—afterwards historian of the campaign,—with the rank of Captain. He bore himself bravely. On the 6th of January, his father wrote proudly to Mrs. Montgomery: "Lewis has been in two actions, and has behaved with the utmost gallantry." And he gained the honor of being praised by name along with the chief engineer, "for talents and bravery," in general orders, at the close of the campaign.

On the 18th of December, Sunday, General Jackson reviewed all the troops in the city, upon the public square. The whole population was present, and contributed all in its power to give *éclat* and brilliancy to the display. It was, considering its materials, a most successful and inspiriting pageant. At its close, Livingston, standing near the Commanding-General, read before the troops and the assembled multitude, in tones never forgotten by those who heard them, an address which moved the enthusiasm of every class. It was a most timely and skilful appeal to all the leading sentiments and motives of a motley population,—Americans, Frenchmen, Spaniards, Germans, and men of color. It was a masterpiece of eloquence, and stirred to its depths the patriotic spirit of the whole multitude.

The fighting soon commenced. Throughout the campaign, Livingston, in addition to his other manifold tasks, constantly performed the dangerous duties of aide-de-camp. In this capacity, on the evening of the 23d of December, he went on board the Caroline, and explained to Commodore Patterson General Jackson's plan for the com-

bined attack upon the British force, encamped at Villeré's plantation. In the night-battle which followed, he was much exposed while carrying the General's orders on horseback in all directions. His bravery on this occasion was particularly acknowledged by Jackson, in his official despatch reporting the engagement; and, in the general orders at the close of the campaign, dated the 21st of January, it was declared that "the General's aides-de-camp, Thomas L. Butler and Captain John Reid, as well as his volunteer aids, Messrs. Livingston, Duncan, Grimes, Duplessis, and Major Davezac de Castera,* the judge-advocate, have merited the thanks of the General by the calm and deliberate courage they have displayed on every occasion and in every situation that called it forth."

Livingston's love of pleasantry was perpetual, and did not forsake him even in the midst of the cares and dangers of a position to him so novel. Mr. Nolte, a merchant, was one of his clients, and had joined one of the volunteer companies of the city to aid in its defence. When the experiment of using cotton bales for filling redoubts was adopted by Jackson, a quantity belonging to Nolte was first taken from a vessel in the stream which was ready for sailing at the time the British fleet appeared. Nolte, on recognizing his property thus used, complained to Mr. Livingston, declaring it to be an outrage to take his cotton, which was of the best quality and already shipped, while there was plenty of a much cheaper sort to be had in the suburbs. "Well, Mr. Nolte," said Livingston, "if this is your cotton, you at least will not think it any hardship to defend it." †

* The brother of Mrs. Livingston, afterwards sent by President Jackson as *chargé d'affaires* of the United States at the Hague.

† Nolte relates this anecdote in his book entitled *Fifty Years in both Hemispheres.* I should not repeat it on the testimony of this lively but

At this exact period his letters by every post to his sisters at the North reveal the fact that he was laboring under something like a presentiment concerning his own fate. His farewells in these letters were more tender than usual, and on the 6th of January he wrote to Mrs. Montgomery: —

"The service is dangerous, and we have lost many respectable citizens; but the survivors are animated with a glorious spirit, and if we fail, the enemy will not find us an easy conquest. Farewell, my dear sister; the chances are now greatly increased against our meeting. Assure all my relations to whom I cannot write, that I love them very affectionately."

But both father and son escaped all harm. Lewis, — the boy-captain, — in the following passage of one of his letters to Mrs. Montgomery, dated February 2, described the *fête* and triumph which greeted the victorious army on its return to the city. I transcribe it, for its freshness, from the original letter now lying before me: —

"Was there ever a finer sight, or a more affecting one, than that which presented itself to our view on the 23d ultimo, when the main body of the army, mostly composed of fathers of families, returned, with their brave and modest leader, General Jackson, at their head, amidst the acclamations of an immense multitude of old men, women, and children, (the only ones who did not share in the dangers of the field,) who all hailed them as the saviours of their country and themselves? . . . .

"On the 24th, the General, accompanied by all his staff, proceeded to the Cathedral, where a grand *Te Deum* was to be sung. On the public square, facing the building, was erected a triumphal arch. On both sides of

most mendacious writer alone. It is confirmed to me by the memory of those who heard the story at New Orleans, not long after the campaign, and of course, many years before Mr. Nolte's volume appeared.

this, a few steps back, were stationed our best-looking troops; and in front of these, nearest to the arch, were to be seen eighteen young ladies, dressed in the same apparel, and each representing one of the States. In the middle of the arch there were two little children, standing on two thrones, erected on both sides, between the columns of the arch. Each held a crown in her hand: General Jackson easily found out who they were for; his modesty suffered, but he was obliged to submit. He passed through the arch and was crowned, amidst the huzzas of the Americans, and acclamations of the French, who did not cease to repeat, '*Vive* Jackson! *Vive notre Général!*'"

After the decisive battle of the 8th of January, General Jackson felt a strong inclination to follow up the victory by attacking the enemy in his position; and he had nearly resolved upon doing so, when a council of officers was called to consider the plan. At this council, Mr. Livingston — bearing the temporary and for him odd title of Colonel — was the first to speak in opposition to the scheme, as too full of needless hazard. His views, seconded by General Adair, prevailed with the Commander-in-Chief, who, after hearing these two advisers state their opinions with great clearness and force, determined upon the more prudent course.

The vehement Commander-in-Chief yielded, on more than one occasion during the short campaign, to prudent suggestions made by his friend, and in one important, if not vital matter, suffered the same mild influence to overrule a judgment into which he had prematurely rushed, but to which he had distinctly committed himself. In one of the two proclamations already mentioned, to the people of Louisiana, which he sent forward from Mobile, in September, and before he had come to rely upon Liv-

ingston's pen for the composition of such papers, he had referred to an attempt of the British commanders to "court an alliance with pirates and robbers," and to their having made offers to "the pirates of Barataria," whom he characterized as "a hellish banditti." These "pirates of Barataria" were a company of smugglers and outlaws, ruled by Jean Lafitte, who had extensive dealings with the privateers then ranging the Gulf of Mexico, under commissions from their Christian majesties of England, France, and Spain, on the one hand, and on the other with the merchants of New Orleans. The character of Jean Lafitte, of his brothers Pierre and Dominique, and of their band, was better understood by the people of New Orleans and by Mr. Livingston than by General Jackson. Early in September, Colonel Nichols, of the British army, had made an earnest overture to Jean Lafitte to tempt the latter and his Baratarians to join in the invasion of Louisiana. Lafitte, feigning a willingness to comply, but declaring that some time and some mystery would be necessary for making his preparations, immediately divulged the overture to Governor Claiborne and the legislature, and calling himself a stray sheep, anxious to get back into the fold, offered to devote himself and his followers to the defence of the country, if their services should be accepted, with an assurance of amnesty for their past conduct. The Governor and legislature hesitated; but the communication of Lafitte becoming known at once awoke many citizens, including Mr. Livingston, to the peril impending over the city; and the public meeting, with the appointment of a committee of safety, on the 15th of September, was the immediate consequence. The offer of Lafitte met with no official response until martial law was declared, and Jackson was, practically, dictator. Then the leader of

the "hellish banditti" presented his proposal to the new power. He was supported in the application by the favorable representations of many official persons and private citizens. The Commander-in-Chief was not easily convinced. But the calm and confident opinion of Livingston prevailed in favor of the Baratarians. They were accepted, formed two companies of artillerymen, fought bravely and faithfully, and earned, what they received, a distinct acknowledgment in the General Orders of January 21st of their right thenceforward to the "salutation of Jackson's brothers in arms."

Livingston illustrated his own willingness to trust the Lafittes, by committing to one of them the execution of an arrangement which he made for the safe removal of his wife and child, in case of the success of the enemy in getting to the city.

The draught of the General Orders of January 21st, in the handwriting of Livingston, carefully corrected by erasures and interlineations, according to his unvarying wont in all serious compositions, still exists. The only difference between the draught and the document as promulgated is, that in the former there is no reference to the conduct of any of the General's staff, or to that of the juvenile Captain Livingston, — an omission which, as we have seen, the Commander-in-Chief supplied.

The busy pen which laboriously distributed in this paper, entitled General Orders, the honors due to the officers and divisions of the little army of defence, produced also, on the same day, an address which was read, by Jackson's direction, at the head of each of the corps composing the line, recapitulating in stirring phrases the chief events of the campaign. After describing the battle of the 8th of January, this paper continues: —

"And this glorious day terminated with the loss to the

enemy of their Commander-in-Chief and one Major-General killed, another Major-General wounded, the most experienced and bravest of their officers and more than three thousand men killed, wounded, and missing; while our ranks, my friends, were thinned only by the loss of six of our brave companions killed, and seven disabled by wounds. Wonderful interposition of Heaven! Unexampled event in the history of war!

"Let us be grateful to the God of battles, who has directed the arrows of indignation against our invaders, while he covered with his protecting shield the brave defenders of their country.

"After this unsuccessful and disastrous attempt, their spirits were broken, their force was destroyed, and their whole attention was employed in providing the means of escape. This they have effected, — leaving their heavy artillery in our power, and many of their wounded to our clemency. The consequences of this short, but decisive campaign are incalculably important. The pride of our arrogant enemy humbled; his forces broken; his leaders killed; his insolent hopes of our disunion frustrated; his expectation of rioting in our spoils and wasting our country changed into ignominious defeat, shameful flight, and a reluctant acknowledgment of the humanity and kindness of those whom he had doomed to all the horrors and humiliation of a conquered state.

"On the other side, unanimity established; disaffection crushed; confidence restored; your country saved from conquest, your property from pillage, your wives and daughters from insult and violation; the Union preserved from dismemberment; and, perhaps, a period put by this decisive stroke to a bloody and savage war. These, my brave friends, are the consequences of the

efforts you have made, and the success with which they have been crowned by Heaven."

We have seen that the duties undertaken and performed by Mr. Livingston, during this campaign, were of the most multifarious description. One of the labors specifically intrusted to him was that of looking to the strict security and proper comfort of the prisoners captured and carried to the city after the battle of the 23d of December, including the wounded in the hospitals.

On this occasion, his goodness of heart moved him to the irregularity of sending a badly wounded English officer, whom he found insensible, to his own house, where he was carefully nursed till he recovered. The importance of preventing the passage of the least communication from the prisoners to the British camp was at that moment so vital that Jackson could not have tolerated such a proceeding in any other man then near him; but he appears to have quietly sanctioned the step, relying implicitly upon the discretion of him whose unmilitary impulse had led him to take it.

On the 4th of February, Mr. Livingston, in conjunction with Captain White and R. D. Shepherd, Esquire, was despatched by General Jackson, with a flag of truce, to negotiate with Admiral Cochrane and General Lambert an exchange of prisoners. These officers were, at the moment of his arrival at the fleet, on the point of sailing in order to make a second attack upon Fort Bowyer, at Mobile Point. The concealment of their design was deemed by them so important that they took the extraordinary precaution of carrying him and the officers who accompanied him to Mobile Point, where he witnessed, on the 12th of the month, the surrender of the fort. He had chafed much under the detention,

and had vigorously protested against it in writing several times. He was treated with great personal consideration by all the British officers, and he bore them much personal good-will in consequence. To Admiral Cochrane, who, during this interval, expressed his desire to possess a copy of Wilson's celebrated work on the birds of America, he on his return sent his own copy of that book. Cochrane and his fellow-commanders had been particularly delicate in avoiding any expression which might possibly wound the patriotic sensibility of their guest and temporary prisoner.

On the 13th of February, the day following the surrender of Fort Bowyer, the commandant of the British fleet received official information of the fact that Great Britain and the United States had signed a treaty of peace. Hearty mutual congratulations were exchanged between the British officers and the Americans on board; and Livingston, now bidding adieu to his compulsory entertainers, on the 19th reached home, where his unexpectedly long absence had begun to cause much anxiety, bearing the first news of peace, — news the official confirmation of which was eagerly looked for, till it at length reached General Jackson on the 13th of March.

It was during the interval of twenty-two days between Livingston's return from the British fleet and the arrival of official information respecting the treaty of peace, that Jackson, by retaining the city under martial rule, excited the discontent of a portion of the people, from which resulted the attempt by Judge Hall, of the Federal court at New Orleans, to examine judicially the validity of the proceeding, — an attempt ending in the summary arrest and banishment of the Judge himself. The next day, a copy of the treaty of peace, forwarded by the Government from Washington, reached the Gen-

eral, who immediately resigned his extraordinary powers into the hands out of which he had taken them. On his arraignment before the court, a few days later, for contempt, he did not appear by any counsel, but Captain Reid, of the regular army, his aide-de-camp, offered to read to the court a defence of the proceeding which had been taken against the Judge. The reading of the paper was not permitted. I have seen the draught of this defence, —an elaborate and respectful statement and argument,— in the handwriting of Mr. Livingston, much erased and interlined, according to his habit. How much, if any, of the deference to law and its tribunal which Jackson happily manifested on this occasion was owing to the wise influence of his now principal adviser, the reader, as well as I, can judge.

Before leaving New Orleans, General Jackson sat for his miniature, painted on ivory, which he presented to his friend, with an expression of the sentiments which inspired the gift, written upon a slip of paper inserted in the frame, as shown in the engraved *fac-simile* * accompanying this volume. This portrait, as will be seen, bears very small resemblance to the several likenesses— all taken much later—by which the inflexible features of Jackson are imprinted indelibly upon the popular mind.

On the 10th of April, Livingston wrote to his sister:—

"We have just parted with our great and good General, and his departure has left a gloom on every countenance, and a void in every heart, except a few who envied his glory, or did not dare to partake in his dan-

* This engraving, the work of Mr. Ritchie, is of the same size as the miniature, with its case, of which it is a both spirited and minutely close representation. The painter of the picture was a French artist, M. Vallé.

W.m. C. Levengston is requested to accept this
picture as a mark of the sense I entertain
of his public services, and a token of
my private friendship and Esteem.
Head quarters N. orleans.
May 1.st 1815. Andrew Jackson

gers. I have been with him from the time of his arrival, and am proud to think that I obtained his friendship and confidence. He presented me, on his departure, with a picture, which I shall leave as an honorable memorial to my son."

Two letters, in my possession, dated, one in April, the other in June, 1815, written by Captain John Reid, the regular aid of Jackson, who accompanied him for some time after his departure from New Orleans, and who was afterwards brevetted Major for gallantry in the campaign, show that Mr. Livingston, to whom they were addressed, then entertained a plan of writing a biographical notice of the General.* They show also that the search for materials was not fruitful, which is the probable explanation of the fact that the projected work was not, so far as I can discover, actually commenced. The materials which were collected for it were finally used by Reid himself in the work which, after his death, was finished by General Eaton.

* The first of these letters was as follows: —

"*Washington, M. T.*
"22 April, 1815.

"MR. LIVINGSTON,—Sir: Enclosed I send you, by the direction of the General, a short sketch of his life. I wish it were more circumstantial. Perhaps when we get to Tennessee, and clear of these dinners, one more to your liking may be forwarded. I have just got up from an overwhelming dinner at this place, and have yet to write what you will find enclosed. A fine trim you will of course suppose me to be in for this purpose. The General is just mounted and gone on, having left with me a few hints on a scrap of paper. Nothing, he says, is so insipid and disagreeable to him, as to sit down in cold blood and write the particulars of his own life.

"I wish you would put down such questions on this subject as you may wish answered, and address them to me in Tennessee. I will promise and forward you the answers, without delay. It is by questioning alone that we shall be able to get at many facts in this man's history.

"Respectfully, Yr. Obt. St.
"JOHN REID."

In the second letter, written at The Hermitage, Captain Reid says, "I am now at the General's, endeavoring to collect the most correct information respecting himself and his achievements. From him I can gather but little, nothing being so irksome to him as to go into details about himself. As to his papers, I am diving into four chests'-full, not very well arranged, and expect to bring up something of value. I have made several 'grabs,' however, without catching anything but 'muddy leaves.'"

These two men, — Andrew Jackson and Edward Livingston, — so utterly unlike each other in nature, culture, and habit, and yet so adapted for mutual respect and for working harmoniously together, had now met at two different epochs of their lives, in circumstances calculated to attract each to the other most powerfully. How durable the attachment so formed between them was, and what an important influence it exerted upon the careers of both, is still to be told.

CHAPTER XI.

LEWIS LIVINGSTON.

Renewal of the Struggle for Pecuniary Independence — Necessity of again parting with Lewis — Return of the latter to the North — Letters from Father to Son — Labors of the former — Progress of the latter's Education — His Successful Mission to Canada to procure the Remains of General Montgomery — Scene at Montgomery Place on the passing by of the Escort, bearing the Hero's Ashes to New York — Return of Lewis to New Orleans — Crisis in the Batture Litigation — An Adverse Decision — Fortitude of Mr. Livingston — His Services in the Legislature of Louisiana — Uneasiness on Account of the State of Lewis's Health — Voyage of the latter to Europe — His Letters — His Rapid Decline and Death — Depth of his Father's Grief.

MR. LIVINGSTON was now fifty-one years old, and the burden which had oppressed his heart for twelve years still clung to him. The Batture enterprise, which had assumed the form of a lawsuit, with many complications, had so far proved an *ignis fatuus*, leading him out of his regular path only to disappoint him. The opening of the courts in May following the campaign which had for months occupied all his mind and strength found him still toiling for subsistence, and still hoping for the accomplishment of his independence. He had no alternative but "to labor and to wait;" and bravely and quietly, though with secret sadness, he continued the struggle. On the 10th of April he wrote to Mrs. Montgomery: —

"It is possible, but not certain, that we may pay you a visit this summer. The old difficulty, that of money, will alone prevent it. Our courts have been closed since the invasion, and will remain so until next month. Should

I be sufficiently successful to warrant the expense, I will come on. I have a good chance, I think, now, of putting down the opposition to my title; and the return of peace will restore the usual value to the property. This, if the blessed day ever arrive, will enable me to do justice and become independent. A few months will decide it."

But instead of a few months between him and "the blessed day" which he had already waited for so long and so wistfully, there remained yet an interval of years, to be passed in patient labor and controversy, disappointment, discouragement, and affliction. Certainly it is one of the saddest sights in the world, to see a great soul, to whose nature the love of money, in the ordinary sense of the phrase, is as foreign as it is to childhood, battling in vain with such a destiny.

The unhappiness of his situation was heightened by the necessity of again parting with his son. The education of the latter could not be advantageously pursued at New Orleans, and that his education should be of the most thorough and the most practical kind was one of the father's principal cares. The manliness and sense of the youth had now inspired him with such confidence in his principles and judgment that he resolved to send him North, to depend on himself in the selection of his teachers, the distribution of his time, and the management of his purse, with such oversight only as he might give by correspondence, until he should be able, as he still constantly hoped, to join him at New York. In the spring following the campaign this plan was put in execution, and several years of separation followed. Their correspondence was unremitted on both sides. Lewis, in his first letter after reaching New York in April, wrote as follows: —

"I have been speaking a great while of myself. In

this case I think it was necessary. Besides, I am writing to my father, and I think Lord Chesterfield directs his son always to break through the general rules of correspondence and make himself the theme of all his letters, when writing to him. By the bye, do you know that I not only see a great similarity in the style of your letters and those of Lord Chesterfield, but also between the two persons to whom they are written, — two young men promising much, but disappointing all. I say promising, because, if I am to believe my friends, great expectations are entertained. The utmost pains were taken with Chesterfield's son, as they are now with me; but I fear that, like him, I shall bring forth no fruit. Davezac used probably to be of this opinion, for in his merry moments he was frequently in the habit of calling me young Stanhope. But, however much I may resemble him, I think I can promise that in some respects at least the parallel shall not hold good."

Some pages will be here devoted to the preservation of the following of Mr. Livingston's letters to his son, written during this period: —

LETTER NO. IV.

"*N. O.*, July, 1815.

"You are by this time, my dear son, if my prayers are heard, enjoying the society of your relations in the land that gave you birth. I wish to heaven my affairs permitted me to join you; the time, however, may not be far distant; in the mean time we must submit to be patient.

"I wrote to your aunt M. by last mail, and hope she has received my letter. She has expressed most affectionate intentions towards you, for which I am very grateful; but I hope her desire to increase your fortune

may not induce her to forego any comfort or gratification which her age or rank in society requires. I am sure you will join in this wish, which I have urged to her, and which you ought strongly to express yourself.

"You are now in a country where politics form the principal, perhaps I may say with the exception of private business the only topic of conversation. I wish to say a word to you on this subject. No man ought, especially in a republic, to be indifferent to the interest of his country; but there is a wide difference between feeling, and, on proper occasions, expressing this interest, and that noisy, intolerant zeal which disturbs society with ceaseless disputes, and can suffer no opinion contrary to our own to pass without contradiction. Unless the society of New York be very much changed, it is very much infected with this fault. It is a great one, even when committed by men whose age and standing in life entitle their opinions to respect, and who naturally are irritated when they are irreverently treated; but it is intolerable in a young man. Whatever examples, therefore, you may see of this practice in your young friends, I hope and expect you will not follow it. Yours is an age for forming opinions, not for making proselytes. Those which you do form will always be, I trust, consistent with the principles of true liberty, without being influenced by the false wit of young persons whom I have heard ridiculing democracy and republicanism, not because they had a predilection for one form of government over another, or indeed understood the principles of any, but merely because they had imbibed a notion that it was not gentlemanlike to be a Republican. For yourself, my dear son, listen and read for some years, and you will then be able to speak with better effect, as well as to think with more precision,—and even disputes, though gener-

ally very irksome to those who are not engaged in them, may become the vehicle of some information to you.'

"Let me know whether your stock of Spanish and of nautical knowledge is increased by your voyage.

"I do not know whether you went down the bayou through which the British penetrated the country. I visited it about a fortnight ago. It is a fine river, and the road they constructed on its bank is still a good one. I am convinced that the attempt to annoy them in their retreat could not have succeeded. They were well fortified at every turn.

"I enclose a letter left for you by Mr. Brown to Mr. Monroe, and a plan given by Mr. Latour. He goes on with his book,* and will go to Philadelphia as soon as the translation is complete.

"I embrace you, my dear son, very tenderly.

"EDW. LIVINGSTON."

LETTER NO. V.

"*N. O.*, 1st of September, 1815.

"I have just received, my dear son, your letter of the 29th July from Rhinebeck. I am very much pleased to find that you are passing your time so agreeably among your relations, but should have been gratified if you could have had recollection enough to give me some news of them. From your silence, however, I must suppose them all well, and from what you say I may infer that they are all happy. You do not even tell me where you have established your head-quarters; if at Montgomery, you would have mentioned your aunt —. I am glad you have General Jackson's letter, and still more so that you view it in its true light as a stimulus to

* *Historical Memoir of the War in West Florida and Louisiana, in* 1814–15. By Major A. Lacarriere Latour. Translated by H. P. Nugent, Esq. Philadelphia, 1816.

further exertions. You are now at the very important, the very critical period of life, when the reputation you are to enjoy in future is formed, and when, unfortunately, it is most difficult to impress a belief of that truth on the mind. On your employment of the next two years, perhaps on that of the present year, the present month, or week, (for not even the smallest period of time is now unimportant,) may depend your consideration and character in future life. I do not mean that you are to spend your whole time in study; but what I seriously require is that you make study of some kind, the acquirement of some useful talent or agreeable accomplishment, your principal object for the next three or four years. In the mean time enjoy all the true pleasures of life; see good company; profit by it; become cited for your ease and gentility of manner, for true politeness, (which is nothing but the practice of goodness in trifles,) as you may be for learning and talents. I will take care to ease you from any solicitude on account of finances. I have no interest but yours, and I know that at your time of life men are not very wise calculators. I hold this language to you, because I know that whatever I can afford to allow you will not be spent in vice or extravagance.

"I will write to you soon on the subject of your request to study at Philadelphia. There are great advantages attending it, and I believe, on the whole, it will be best. But wherever you are, I bespeak an hour every day for the Latin and Greek classics, one for Spanish, another for French exercises, and a fourth for some branch of the mathematics. The other twenty you may dispose of in such way as you think most profitable and most amusing. This, I am sure, is not unreasonable; and wherever you are, even on a party of pleasure, four hours each day may be taken in the morning or evening,

and leave you all the time for amusement that can be required. I mention particularly the Spanish, because I have it very much at heart that you should be perfectly master of it. Our connections with the Southern continent are every day becoming more important, and in whatever line you may be, a perfect knowledge of that language will give you a most decided advantage. We are all well, and love you affectionately.

"EDW. LIVINGSTON."

LETTER NO. VI.

"*N. O.*

"MY DEAR SON: I have just received your letter of the 28th October. If I disapproved your conduct in any particular, it must have been very slightly, for I have already forgotten it, and cannot imagine to what part of my correspondence you allude, which you say made that impression upon you. I sent you by Mr. Spencer three bottles of mineral water, from a spring found on my lands on the Pass Christian on the margin of the sea; and from the imperfect analysis I have been able to make here, it is found to contain sulphur and iron in unusual quantities. One of them you may try your own chemical talents upon; give the others to Dr. Mitchill, or any other celebrated chemist who will take the trouble of making the analysis, and who will write me such an account of the nature of the water as I may publish, if I choose, with his name.

"In pursuing your classical studies, I would recommend an attentive perusal of Livy, and even a translation of some of those passages whose beauty strikes you most. Take, for example, the first twelve sections of the 9th book, and when you have made a translation of it that pleases you, send it to me. I recommend Livy in

preference to Tacitus, because I think it almost impossible to render into any modern language the sententious brevity of the latter, while I think the flowery style of Livy may be imitated in English with some success.

"I interrupted my letter here that I might try by experiment whether the opinion I hazard is just, and I enclose, as a specimen,* the speech of Pontius from the

* Translation from Livy enclosed in the above letter: —

"To this Pontius replied: 'I neither accept the surrender, nor would the Samnites confirm it, if I did. But you, Posthumus, if you believe in the existence of the Gods, either abide by your stipulation, or let everything be as it was before you made it. Restore to the Samnites what they had in their power, or give them the peace for which they surrendered it. But why address myself to you? you, who, with a mockery of good faith, came to surrender yourself to your conquerors. It is to the Roman people I speak, and I call on them, if they refuse the treaty of the Caudine Forks, to replace their legions in the toils where they were previously entangled. There shall be no deception; the treaty shall be annulled; they shall receive the arms which, pursuant to its stipulations, they surrendered; they shall occupy the same camp, and everything shall be restored to them which, on the day before the parley, they possessed. After this, they may with propriety resort to energetic counsels, and trust to the fortune of war. After this, if they choose, let them indignantly reject all offers of surrender and peace. On our part, we may then carry on operations with the same chance of success, and in the same situation in which we stood before they offered to capitulate. Then the Romans cannot complain of the terms imposed on their consuls, nor we of the ill faith with which they were violated. But have you ever waited for a pretence for breaking the engagements you made when you were conquered? You gave hostages to Porsenna, and you meanly stole them from his power; you ransomed your city from the Gauls, and assassinated them while they were counting the price. You promised us peace to procure the liberation of your legions, and you break that peace as soon as they are restored. Never have you wanted a semblance of right to cover your want of faith. Does Rome disdain to preserve her legions by an ignominious peace? Let her annul the treaty, but restore the captive legions to their conquerors! This would have been a duty in which the imperial ceremonies might have been worthily employed; this would have accorded with their pretensions to good faith and regard to treaties. As it is, you have got all you expected by the treaty; your citizens are restored safe to their country, while the peace which was promised me as an equivalent is not preserved. Answer me, Cornelius! Answer me, Ambassador of Rome! Is this your public faith? Is this your law of nations? As to these men you pretend to surrender, I neither receive them, nor consider them as offered to me. They are free; let them return to your city, loaded with the weight of the stipulations they have made, and with the anger of the Gods whose name they have profaned. Go, Romans! Wage war upon us because Sp. Posthumus has just smote the Roman herald with his knee! Go! persuade the Gods that Posthumus is a Samnite, not a citizen of Rome, and that, because a Roman herald has been assaulted by

XI. section of the book I referred to; it is nearly a literal translation, and yet if I mistake not it might pass for an original composition in English. Independently of the beautiful language and elegant descriptive powers of the author, this passage of history is a very remarkable one; but the law of nations must have been a very extraordinary one which would permit the historian to doubt whether, by the offer to surrender their General, the Romans were absolved from the obligations of the treaty: '*Et illi quidem forsitan et publica sua certi liberati fide*,' etc.

"In my last I requested the new distribution of your time; do not forget to send it.

"Yours, most affectionately,

"EDW. LIVINGSTON."

LETTER NO. VII.

"*N. O.*, October 1st, 1815.

"MY DEAR SON: Some vexatious business and a journey I have been obliged to make have interrupted my correspondence with you for some weeks. In the intermediate time I have received yours written before and after your journey to the Springs, and previous to your journey to Niagara. I very much approve of your movements, particularly the last.

On the subject of your studies and your residence it is time to come to some conclusion; and in the resolution I have taken I give a proof of my confidence in your prudence that would make many wise people doubt my own. I will state to you what I wish and request you to learn, and I leave to yourself the selection of the

a Samnite, the war you are about to wage is just. Do you not blush at this open mockery of religion? Respectable by office and by age, are you not ashamed of this poor attempt to deceive us by tricks which would disgrace a boy? Go, lictor! unbind these Romans! let them depart unmolested.'"

place in which it will be most practicable to obtain teachers and other facilities to carry my plan into execution.

"First, you know my desire that you should not only be a good but an excellent scholar in the Greek and Latin languages; one hour or more must be employed regularly every day, without exception or excuse from pleasure or other avocations, in attaining this, for the next two years. If you continue thus long from duty, you will persevere afterwards from inclination. Whatever other studies you pursue, this must accompany them. You are sufficiently advanced, perhaps, in this branch, to proceed without much aid; but I should prefer your passing your allotted hour in company with the best professor of the languages you can procure; it will make you punctual in spite of yourself, and your studies will be facilitated by the intercourse you must have with him. During that hour, be a perfect pedant. Have no other ideas but classical ones, and make it a practice to write a short version of them every day. A few lines only, if you put no interruption to your daily practice, will in a short time give you an astonishing facility. I once began this, but was foolish enough to discontinue it, and have never ceased regretting my want of perseverance. For this winter, your mathematical studies must be continued with the greatest diligence. This is the great groundwork of all science, and of most of the Arts. Without a very considerable knowledge of them no eminence is to be attained; it is the handmaid to the more showy acquirements, and abridges wonderfully the labor of acquiring them, if indeed they are to be attained without it. I do not speak of arithmetic; that is indispensable to every man, from the Secretary of the Treasury to the grocer at the corner; and not to have a perfect and easy use of figures is a reproach to the mean-

est capacity; connected with this, you will do well to get some idea of the practical mode of keeping merchants' accounts; you will find it of great use in life, particularly if you should choose the profession of the law. Your Uncle C., or any other merchant with whom you are intimate, will give you an idea of it in a few days. What I particularly mean is algebra, trigonometry, surveying, navigation, perspective, and the other practical sciences to which it is applied. I do not want you to discover the quadrature of the circle, but I wish you to be a good geometrician, and able to follow or make any of the calculations that are usually found in books of science. In physics, you will find this of the utmost consequence, and, indeed, most of the modern books on this subject are nearly unintelligible to one who is not an algebraist and geometrician. For the next three months, therefore, I think you should divide your time between the learned languages, mathematics, and Spanish. This will occupy you four or five hours; two hours more for history, accompanied by geography and the globes, will bring you to your dinner-hour, after which I have nothing further to say to you till ten, except to request that you pass your time in the best society in the place where you are, — the best informed men, the politest and most fashionable women, — but no carousing, no drinking-parties, no late suppers. You do not love wine, you justly abhor play, and you have no taste for bad company; do not, therefore, let the fear of ridicule among a few idlers deprive you of the use of moments so precious to your future prospects, to your happiness and that of your friends, as those which will make up the next two years of your life.

"With all my confidence in you, my dear son, you cannot conceive my anxiety. I am doing a novel and

a hazardous thing. I am trusting a young man, not seventeen, to his own guidance, in the midst of the temptations of a populous city. I give him no superior, no monitor but his own sense of right. If you should be seduced by dissipation, if you should disappoint my expectations, what an eternal source of regret and self-reproach! No! I shall never forgive myself, if you are not everything I expect, everything I wish, that is, a good, a moral, an honorable, an accomplished and polite man. But though I cannot help feeling anxiety, I have no real fears, and I proceed with my plan. After two or three months you may let your mathematics give way three times a week to physics by attending a course of lectures on them at the University. Astronomy and chemistry may follow in succession, and in the same manner. But do not confine yourself to the attendance on the lectures; get acquainted with and cultivate an intimacy with the several Professors; talk to them on the subject of their respective branches; ask explanations, and get all the knowledge out of them you can. You will find each of them fond of his science, and he will be pleased with those who desire to excel in it.

"During this time you will *pro forma* enter your name in the office of a lawyer, to save a year or two in case you should choose the profession of the law, — if at New York, Mr. Hoffman or Mr. Colden will do me this favor; if at Philadelphia, Mr. Du Ponceau. As to the choice of place, speak to Chancellor Kent, who is my particular friend and a man of superior judgment and learning, and after getting all the information in your power as to the comparative merits of New York and Philadelphia for your plan, take a room in a private family, and send me an estimate of what you will want as well for your board, lodging, and tuition as other

expenses, which I am willing should be such as are necessary for a young man to appear in good society. By this I do not mean a leader of the fashion, a beau, or a pillar of public assemblies. The attendance on those diversions which encroach on the night you will find totally incompatible with such a steady pursuit of your studies as I trust you will maintain. Early rising is indispensable, and you will never attain eminence in any of the pursuits allotted for you, if you suffer the evening's amusements to encroach upon the morning's studies.

"I give you no particular allotment of your time; that must depend in a great measure on circumstances, but it will be extremely important for you to make a distribution, and to abide by it. If there is a good riding-master, take a few lessons, and keep up your fencing. Painting I know you will of course cultivate. When you are fixed, let me know very particularly how you divide your time. I shall send funds to your uncle C. to provide for your expenses, to be paid quarterly in advance. At present I presume $2000 per annum will be sufficient; but I am not well informed as to the rates of things in the United States. Therefore make your own estimate, and if $500 more be necessary, it shall be provided.

"I have spoken of your entering your name in a lawyer's office, in case you should choose that profession, for it is absolutely necessary you should have one. Should you have a fortune, it will enable you to preserve and do credit to one; should you have none, it will be necessary for your support.

"Farewell, my dear son; we all embrace you tenderly, and love you dearly.

"EDW. LIVINGSTON."

LETTER NO. VIII.

"*N. O.*, 29th December, 1815.

"My Dear Son: I have received yours of the 1st of December, and am sorry that you cannot find accommodations in a private house. The great number of persons with whom you must necessarily associate in a lodging-house will, I fear, interrupt the constant attention which is now necessary for your studies. I say *now*, because the events of the last year have not only interrupted them, but have brought you forward beyond your years, and led the world to expect more from you than would be required from a young man of the same age who had spent his time in retirement. This ought, you will say, to be the reverse; but the world is not always just. You do not tell me in any of your letters whether you have found proper instructors in the different studies I have recommended, nor do you give me your reasons for preferring New York to Philadelphia as the seat of your studies. All this I wish much to know. There are some other points in my former letters on which I asked for information, that you do not notice in any of yours. This must arise from your not having my letters before you when you write to me. Unless you do this, you may write to your correspondents, but you will never answer their letters, and this is losing the best advantage of a correspondence.

"If only three years' study in an office are necessary to procure admission at the bar in New York, you need not enter your name until you are eighteen, as you cannot be admitted before twenty-one. Inform yourself on this point, and follow the advice of Mr. Colden, which you will request him in my name to give you. Let me know in your next what studies you pursue, who are

your instructors, and exactly how you divide your time between them. What society do you most frequent? Which are the houses you are most intimate in? Have you been introduced to the French emigrants of distinction, of whom there are several, it is said, at New York? If any of them are coming this way, offer them letters to me, saying that you are sure I will be ready to render them any service in my power, and that I shall feel great pleasure in their acquaintance, etc., etc.

"Farewell, my dear son; we shall soon begin a new year. You may make it a happy, by making it a profitable one, and I have no doubt you will. Though every succeeding revolution now drags me from the meridian of life, yet it raises you to it, and this is among the greatest of my consolations. May you shine, when you arrive there, with that true splendor, which virtue, knowledge, and talent united, only can give!

"EDW. LIVINGSTON."

LETTER NO. IX.

"*N. O.*, January 13th, 1816.

"MY DEAR SON: There will, I believe, be no necessity for your entering your name in a lawyer's office until you see me, which I hope will be in the beginning of the summer. Thank Mr. P. in your own name and mine for his offer, but do not accept. I would advise you to tell Governor Tompkins that you have consulted me on the subject of the offer he was kind enough to make to you of a place in his staff; that I have desired you to say, I am very grateful for this mark of his attention, but that I am solicitous your studies for one year at least should receive no interruption, and therefore request that, if the place requires any duties which would interfere with them, he would defer the kindness he

intends you for about that period, when you will devote a portion of your time to his service with pleasure. Should he offer to give you the place without requiring any service that will interfere with your course of study, such, for example, as restraining it to attendance on general reviews in the city, I think there would be an advantage in accepting it.

"I am glad Mr. Vanderlyn is returned, and should be very well pleased to hear that you had prevailed on him to give you some lessons. If you were sure of obtaining his instructions or those of any equally celebrated master in about a year, I should prefer your postponing this study until you were perfect in another which I think more useful, — drawing, perspective, and ground plans of buildings, fortifications, and machines, all of which you will find extremely important through life, and the last particularly in your study of mechanics. Field plans ought also to accompany your lessons of trigonometry and surveying; after acquiring the theory from your mathematical teacher, you might, in your visits to the country, put it in practice with Mr. Cox. As a lawyer this knowledge will be found very useful to you. Your painting apparatus and other effects shall be sent by the brig Archimedes (I hail the omen while writing of mathematical studies to a young engineer!). Before I am quite done with painting and drawing let me give you a serious caution on the subject of caricatures. It is a most dangerous art even when discreetly indulged in, and a detestable one when directed by ill-nature or revenge, or even without these, by careless gayety. The very reputation of this talent is dangerous, should it even never be exercised. I know not a single advantage attending it. Never practise it, therefore, even among intimate friends. The diffidence you express

of your success in the different studies in which you are engaged is natural at the first view of their variety and difficulty. The perseverance I know you possess, will soon vanquish the first obstacles, and you will then pursue your course with the animation inspired by the certainty of reaching the goal. Be firmly persuaded of this truth, that, next to the consciousness of rectitude in religion and morals, the highest satisfaction the human mind is capable of feeling is that derived from a sense of progress in knowledge. May a happy experience teach you the force of this maxim; then all the other adventitious pleasures of life will acquire a permanence which the want of this consciousness would quickly destroy.

"EDW. LIVINGSTON."

LETTER NO. X.

"*N. O.*, 16th March, 1816.

"MY DEAR SON: You have some reason to complain of the irregularity of my correspondence; I am pleased, however, to find it has no effect upon yours. Do not be afraid of your letters being troublesome to me; on the contrary, I examine the series carefully to see that you do not fail in your engagement of writing at least once a week. Your last is of the 16th February, and you ought then to have received some letters I wrote in January. They will, however, before this have given you the information you desire as to my views respecting your studies and your profession. As to the first, you have exactly fulfilled them. You know the importance I have always attached to the mathematics, and I am delighted to find that it is a favorite study with you. Your mother only yesterday predicted you would be extremely eminent in that branch, and she was of

course much pleased to find by your letter to-day that her prediction will probably be verified. I have urged the necessity of a proficiency in the exact sciences more strongly upon you, because I have throughout life felt the deficiency of my own education in that particular. At college I had no one in whom I had sufficient confidence to convince me of the utility of these studies, and I was then only sixteen. I passed them over with the carelessness natural to my age, learning only so much as was necessary to the obtaining my degrees, and before I acquired experience enough to show me my error, professional business, politics, and misfortunes had brought me to an age at which it would have been ridiculous to attempt it. You have a right, my dear son, to the benefit of my experience, and I feel no mortification whatever in any confession that may be of use to you. Do not believe, however, because you are pleased with the precision of mathematical truth, that you are therefore excluded from eminence in those studies which give a greater scope to the imagination, and especially in eloquence. On the contrary, true eloquence can never be acquired without a foundation of that true logic of which mathematics is the basis. Imagination, unrestrained by the reasoning powers, is but another name for fancy, and fancy alone may sometimes amuse, but will never convince. It may excite admiration, but it is never permanently useful unless it be made subservient to argument, and argument is the demonstration of mathematical truth. Connect, therefore, your studies of eloquence and the *belles lettres* with those sciences which can alone render them useful as well as ornamental. Do not be discouraged if for many years you should find a difficulty in expressing your ideas with the elegance you wish. If you have a sense of imperfection on this point, it is

only a proof that your taste excels your skill, and as the latter is to be attained by practice and a study of the best models, the circumstance that seems to discourage you at present ought to animate you the most; you have the idea of excellence impressed on your mind, and while that is not corrupted be assured with diligence it can be realized. Were you now satisfied with your compositions, there would indeed be very little hope of your attaining the eminence to which you are destined if you persevere and improve your taste, and direct your studies by its dictates. My former letters will have anticipated the answer to those now before me relative to your future profession. The study of the law, whatever may be your destination in life, will always be extremely useful. I intend, therefore, that you should make yourself master of its practice as well as theory. But for one year, at least, I do not wish your attention diverted from the course of academical studies in which you are engaged. During that time you had better remain where you are. I shall most probably be with you in June, when we shall be in time to take such measures as will be necessary to insure your admission at the bar as soon as your age will allow.

"I am ever, my dear son,

"Your truly affectionate father,

"EDW. LIVINGSTON."

LETTER NO. XI.

"April 29th, 1816.

"MY DEAR SON: I doubt very much the accuracy of your observation that the best writers are those who understand no living language but their own; on the contrary, I would cite many examples to contradict it. Rendering the idiomatic phrases of a foreign language

into our own is an exercise that must give a great command of words to the student who is not content with a literal translation, which no man of common sense will be; its difficulty gives a new spur to invention, and a single page of Tacitus or Rousseau has made me use more words, and shape more phrases, than if I had to compose twenty on the same subject. I do not, however, advise the study of any language (except Latin, Greek, and French,) as matter of such primary importance as to exclude that of the sciences, but I think they need not interfere. A very short lesson taken punctually every day will, at your age, make you master of any language, and they are all ornamental and useful, though they may not be necessary. If you practise the law either in New York or Pennsylvania, you will find some knowledge of the German to be important. It is, however, a very difficult language; and if you find that it trenches on the hours you set apart for any of the sciences, abandon it. I do not know whether to compliment you on your discoveries in physics or not; the pursuit of the perpetual motion, though always unsuccessful, may yet, like that of the philosopher's stone, produce some improvement which would not otherwise have been made. I had, myself, thought both of your siphon and capillary tubes. The first I was very sanguine of, under the notion that the force of the water issuing from the siphon was in proportion to the height of the instrument, and not to the difference between the surface of the water and the lower orifice of the siphon, as it really is. The capillary tubes, I found, would raise water; but I could discover no principle on which it would flow through them, unless they were bent into the form of a siphon, by which nothing was gained. I should like to see your plan. Look for improvements with as

much diligence as you please, but do not announce any discovery merely on its theoretical probability. The world loves to laugh at the miscalculations of the learned, and when they get the habit they will continue it, even without reason. As you quote my example, do not disregard a precept which has been proved to me by experience.

"Farewell, my dear son.

"EDW. LIVINGSTON."

LETTER NO. XII.

"*N. O.*, 28th October.

"It is very difficult for me, my dear son, to direct your studies at this distance; my general plan has been frequently communicated. Mathematics in almost all its branches, you know I consider as the groundwork of all useful science, I might almost say of all useful knowledge. This I have often repeated; and you seem to be not only convinced of its truth, but to have acted from that conviction, and to have applied to that study with the perseverance necessary to become attached to it. A correct knowledge of the learned languages, you are also aware I consider necessary in the education of a gentleman. I do not mean to carry my idea of this necessity so far as to embrace that critical knowledge which can only be acquired by a sacrifice of other more useful studies; but I think such a proficiency ought to be made by the student as will enable the man in his future life to taste the beauties of the Greek and Roman authors, — that he should read them with ease, and that he should persevere in his studies until he reads them with pleasure. After these come the modern languages, of which you already possess the principal and most difficult. If your leisure will permit, I should advise you

to add the Italian to your stock, but to pay your principal attention to the ready and elegant use of the French and Spanish, both in speaking and writing. A few minutes each day, regularly and attentively employed in composition, and using every opportunity of conversing with those who understand the language well, will attain this desirable end. On this subject let me guard you against that false shame which prevents learners from profiting by the conversation of strangers in their own language. Without seeming to seek for an opportunity to display his knowledge, the man of sense will find an occasion of turning the conversation into the channel from which he wishes to derive instruction. Read or recite as often as you can some portion of Racine's and Voltaire's tragedies, before some one capable of correcting your faults, and sufficiently intimate with you to do it freely. For French prose, I believe no author is so good a model as Rousseau. Observe that I confine my eulogium to his style, for I neither admire the man, nor many of his works; but there is a harmony in the structure of his sentences which I can perceive, though I by no means possess an accurate knowledge of the language. As for the Spanish I must again insist on the great utility of a very familiar use of it. Our southern neighbors are rising in the political world, and the local situation of the United States will oblige us to an intimate connection with them. You have said nothing lately of the German; if you find it interfere greatly with your other studies, you may discontinue it, for in truth it is not so essential as the others. After Latin and Spanish, Italian can without much difficulty be acquired in a sufficient degree to read their great poets, — it will not probably be very necessary for you to speak it. The studies I have mentioned may be considered as the run-

ning base of your education, to accompany all the others to the end of the piece. The principles of astronomy, natural philosophy, chemistry, and natural history, may be acquired in a sufficient degree for future use during the course of the next year, in the order that your convenience or inclination may direct. I have said nothing of history, and its two attendants, chronology and geography, because I hope they are the occupation of all those odd ends of time which are not employed in those studies that require an instructor; nor of what is called moral philosophy, because I think the best system of morals is the dictates of an honest heart; nor of logic, because all that is necessary to be known of it is very little, and that little will best be acquired in the pursuit of your legal studies, which I do not wish you to think of till the end of the year. I hope because you are upwards of six feet high you have not thought it necessary to dismiss your dancing-master; on the contrary, great grace of movement is necessary to make common-sized people forgive a tall man the advantage nature has given him in stature. I have before mentioned the necessity of fencing well; and if you have a good master, in the course of the summer take lessons in equitation. Grace in sitting a horse, and skill in managing him, are great advantages.

"Your proficiency in drawing, and great taste for it, renders anything but a caution not to let it engross too much of your time unnecessary. Do not forget, however, what I have frequently repeated, of the drawing of plans and machines, which is, in my opinion, the most useful branch of the art. The order of these several studies, the time that you appropriate to each, the choice of your masters, etc., etc., must be left to your own discretion, on which I rely with confidence. I might assist

you greatly were I with you, and the sacrifice of your society costs me very dear; but I will not, to gratify myself, give up any important advantage to you, and indeed the consciousness of doing so would destroy all the happiness I should derive from having you with me.

"Farewell, my dear son.

"EDW. LIVINGSTON."

LETTER NO. XIII.

"January 13, 1817.

"MY DEAR SON: I have just now received your letter of the 16th December, and am very glad to find that you are again seriously at work. Remember, however, that I neither expect nor desire that you should so devote yourself to study as to exclude altogether society and the amusements proper for your age. On the contrary, my plan for your education embraces a due proportion of all, and I have such confidence (rarely placed in one of your age) as to believe you capable of mixing them for yourself. You seem to speak discouragingly of the effects of your studies, and I imagine you allude to the learned languages; it is impossible you can yet perceive the operation which this species of knowledge has on your style, or the importance of the store of ideas which this study will afford you. I am myself but an indifferent scholar. I spent my time rather idly at school, and still more so at college, which I left at a very early age; but on mixing a little with the world I was fortunate enough to discover the defects of my education. I then began to remedy them, but was much counteracted in my endeavors by my former habits of idleness, and by my new pursuits of pleasure. Notwithstanding these disadvantages, I have had some success in forming a style which has on particular occasions been commended; and I owe

it, I think, principally to a close attention to some of the classics, which I studied until I became enamored of their beauties. The advantages which I enjoy so imperfectly I wish you to possess completely; so that when at my age you are writing to your son, you may not only impress upon him by principle, but exemplify in your style and manner, the advantages to be derived from a perfect knowledge of the classic models of good writing. Modern authors have their day of fame; they find admirers and critics; but that which all the world has for two thousand years admired, and still admires, must be good, and there is no danger in forming one's self on such models. By forming I do not mean imitating or attempting to imitate in original compositions; but what I do mean is transferring their spirit into your writings by cultivating a taste for their beauties, and, when that taste is formed, indulging it by frequent perusals and translations. When you meet with a beautiful passage, such as some of the exquisite pictures presented by Livy, ask why they please you. Examine whether the story would be more striking if told in any other manner, — if the parts could be differently arranged to greater advantage? If any figure or other ornament would render it more striking? Nine times out of ten, in the author I speak of, you will find that he pleases because he copies nature, and that all additional ornament would spoil the effect which is derived in his style from an inimitable simplicity. I am glad to find you pass but an hour in the office. This will not interfere with your course of studies, but may be made to coöperate with it. I would recommend you, therefore, to divide that hour between Quintilian and the Institutes of Justinian. To prepare yourself for the latter, read first with attention the chapter in Gibbon which contains the history of the civil law, and a little book called

'Horæ Juridicæ,' which was published at Philadelphia by Mr. Du Ponceau, with some good notes. If I go on at this rate you will not complain of the brevity of my letters. By the way, that complaint may be anything else for aught I know. It is written in a style of obscurity that would do honor to Oliver Cromwell. I enclose it that you may send it back with explanatory notes. The first object of all writing, and particularly of letter-writing, is to be understood. This fault has not occurred in any of your letters before, and therefore it strikes me more forcibly. Farewell, my dear son; I will not close my letter without expressing to you the pleasure I felt yesterday at hearing you spoken of in terms of the highest commendation by General Ripley at a public dinner.

"EDW. LIVINGSTON."

LETTER NO. XIV.

"February, 1817.

"MY DEAR SON: The people who tell you that I could pretend to any political advancement in New York, if they are not actuated by a complaisant insincerity, cannot, I think, be well informed. Popularity is a prize too eagerly contended for by candidates who make it the pursuit of their lives to leave any hope of acquiring it to one who never understood, and who disdained to practise its mysteries. Of all the follies of my youth, and I have had too many, the one of which I am most perfectly cured is the desire of political preferment. Do not take this as a general reflection applicable to all; the pursuit of honest fame, the desire to serve your country, the noble ambition of devoting even your life when her safety requires it, all these it would be a kind of sacrilege to characterize as follies. Mine consisted in the endeavor to push myself forward into places that would have

been, certainly as well, perhaps much better, filled by many others, to the neglect of my private affairs, and by that means involving myself. Take this, therefore, as a rule which I cannot too often or too seriously impress upon you. Never accept any public employment that will directly or indirectly trench upon your independence. If my endeavors to secure your fortune should be unsuccessful, first procure, by your own efforts, such a provision as shall raise you above the necessity of incurring any pecuniary obligation. You may then, and not before, pursue your public duties without any danger of being forced by necessity to abandon them. I do not mean by this that you should endeavor to amass great wealth. Such a pursuit would be an unworthy one; but when wealth cannot be attained commensurate with our habits and desires, these last may be restrained to the limits of our circumstances, and the same end be attained with much less trouble. Adieu, my dear son. May Heaven bless you with as much fortune as you can worthily enjoy, and all the advancement that will tend to the welfare of your country.

"EDW. LIVINGSTON."

LETTER NO. XV.

"29th September, 1817.

"MY DEAR SON: This I presume will find you at New York, resuming your usual studies. I wish you particularly to go through the course of chemistry, mineralogy, and geology, and above all things to continue your translations from the Latin and Greek classics, particularly the historians. You say you cannot find a copy of Livy, — but surely in such a city as New York, you may borrow it, if you cannot buy it. Purchase a copy of Quintilian, which I wish you to study accurately. His

style is elegant, and his precepts generally correct. He requires more of his orators than can generally be attained, and, as well as Cicero in his treatise 'De Oratore,' considers a perfect orator as something more than human. But though none have acquired that point of perfection, a close attention to the study may enable some to approach it, and failure in such attempts is in itself attended with some degree of glory, and always with great advantage. The mind that is great enough to appreciate the character of a great speaker, the spirit that has energy sufficient to attempt its acquisition, will always attain a high superiority, although other circumstances should prevent their reaching the goal. Should you enter your name in a lawyer's office on the same footing you were in Mr. P.'s, I advise you to read with attention and make extracts from the Institutes of Justinian. Read as much as possible from the original, and do not recur to the translation except for words and phrases you can find nowhere else. Calvin's 'Lexicon Juridicum,' which you will find in the City Library, will be a good assistant, and you had better have recourse to it than either to Cooper's or Harris's translation.

"Much as I wish to see you I cannot think of letting you lose this important winter, which you would do by passing it here.

"EDW. LIVINGSTON."

LETTER NO. XVI.

"*Plantation Ste. Sophie*, 7 December, 1817.

"About the 1st of October, having exposed myself very much to the heat and rain, I was taken with a violent fever, which reduced me very much. I thought it completely broken; but it has returned at irregular intervals ever since, and has, I think, very much impaired

my constitution. I arrived here yesterday, and already feel so much benefit from the change of air and exercise, that, though I quitted my bed only forty-eight hours ago, I am strong enough to go about the whole day without any great fatigue. I was more sorry than surprised at what you tell me of the violence with which some persons enter into political animosities, fostering them until they make them personal, and giving themselves much more pain than they inflict. As to the particular subject of the conversation you relate, whether it be owing to a disposition I have always encouraged of forgetting injuries as soon as I possibly could, or not, I cannot tell, but I remember none which the gentleman alluded to has done which ought to make me, particularly at this distance of time and place, participate in the hostile feelings which others perhaps justly entertain towards him. I have long lost all feeling of party spirit; very good men think very differently on the same subject, and no political measures, none but those tending manifestly to the ruin of the country, will ever excite any warm sensations, or provoke any warmth of language on my part. I would oppose all that I thought wrong, were I in any of the departments of government; and I think it is but fair in me to believe that those who are there will act at least as wisely and as honestly as I should. To those, therefore, I leave it; without, however, debarring myself the privilege of calmly, but independently, expressing my opinion on every subject of public interest whenever occasion may require it. *Mais pour en revenir a nos moutons.* I spoke to you favorably of the Governor's measures, because I think them, as far as they have come to my knowledge, (which I confess is very imperfectly,) well calculated to promote the honor and permanent interest of the country, and to be based on en-

lightened and liberal views. His motives may be founded on personal interest or ambition. Of this I am no judge. I judge only from the effect, and I think until Heaven shall endow us with the faculty of reading the heart, it is the only fair mode of judging. But I do not desire to be his partisan, or the partisan of any man. If my earnest desire of returning to my country should ever be realized, I wish to avail myself of the happy exemption my absence has given me from all party attachment or animosities. I can then only enjoy that undisturbed obscurity in which I wish to pass the remainder of my life.

"I had several things to add which I must defer, as I find I have overrated my strength. God bless you, my dear son.

"Your affectionate father,

"EDW. LIVINGSTON."

LETTER NO. XVII.

"September, 1818.

"MY DEAR SON: I have received your account of your expedition,* with which I am very well pleased. I could have wished, however, you had been more particular as to the manner in which you carried on your negotiation. The Governor's indisposition prevented your seeing him, but you must have written, or did you trust altogether to the influence of Mr. Smith?

"If the great cause between the two fur companies was tried while you were there, you must have heard the best speakers at the bar. What is their force? Is the question between them merely one of the boundary of their grants, or do they draw their privilege in question?

* His mission to Canada to procure the removal of General Montgomery's remains to New York, of which an account will be given further on in the present chapter.

Is the foreign commerce carried on from Quebec or Montreal chiefly? When I was there, about seventeen years ago, only vessels engaged in the carrying of furs came to Montreal. Did you see many of the British officers?

"I have received a letter from your Aunt M. She says that F. L. is about to prepare some biographical notice of General Montgomery. Is he qualified for the task? It is no easy one. The biography of the present day is wretched trash, — trying to raise common events by an inflated style, and sinking those that are truly great by a mixture of affectation and vulgarity of expression, — swelling the matter for a few pages into a large book, and filling the intervals between the thoughts with words. It would grieve me to see the memory of one for whom I had a regard oppressed with such a monument. I know of no one but General Armstrong who could perform this task, both for General Montgomery and the Chancellor.

"Farewell, my dear son,

"I am, with the truest affection, yours,

"EDW. LIVINGSTON."

LETTER NO. XVIII.

The date and beginning of this letter are wanting. It was probably written before some of the preceding.

. . . . . .

"While on this subject, I wish you to get a large, and the latest map of the United States; hang it up in your room, and, beginning either at the North or South, study every State successively, until you make yourself master of its boundaries, rivers, towns, harbours, etc.; and when you meet with well-informed men from any State converse with them on the subject of its geography, population, and history, until the principal points are well and

accurately fixed on your mind. The little odd minutes which form so large a portion of human life, and that are constantly lost in silly observations on the weather, etc., may thus be turned to profit and amusement too. I would not, however, have you an importunate questioner; nothing is more irksome. But the conversation may without any direct attempt generally be turned to the point you wish, and your man be made to give all the information he has, without being ordered to stand and deliver it. For instance, I will suppose that Mrs. Kinsey, among her South Carolina guests, should receive an old officer who had served in the Revolutionary War, and had been present at the Battle of Camden: you will immediately turn to General Lee's Memoirs or Ramsay's History for the general account they give of that battle, and of the events which preceded or followed it. You will observe whether your authors agree or disagree on the leading features of the action, and you may afterwards without impropriety tell your veteran that you have read their accounts, but will be greatly obliged to him if he will tell you on which you ought to confide on such and such points. This, seasoned with a complimentary allusion to the share he had in the affair, or in the general course of the war, will induce him to communicate with pleasure all he knows, and perhaps something more; for this you will have to make allowance, proportioned to the character of the narrator,—for this kind of information is not always the most correct. Conversation rather gives us the means of acquiring the materials of knowledge than knowledge itself. It pins facts in the memory by discussing them, and some little anecdote or secondary circumstance, not thought of sufficient importance to find a place in a written relation, imprints the principal event indelibly on the memory. *A propos*

of Revolutionary officers, they are a race of men that are now almost extinct. By the time you enter life very few of them will survive; they have generally received, and deserve the highest respect; this veneration will increase as their numbers diminish, and as antiquity casts its glow over their faults. It will be interesting before you die to have known and conversed with such men. I would therefore advise you to cultivate their acquaintance on every proper occasion; and when you receive any historical event from any one who was actor or present at the scene he relates, commit it in a few words to writing when you return home, with the name of the person from whom you had the information and the date. Such *memoranda* you will find hereafter of great use.

"I am suffering under the effects of an influenza, which has stupefied and tormented me for a fortnight. This is a much better excuse for the *Blue Devils* than any which a young gentleman in your situation can possibly have. Yet they have not attacked me. Be assured that the *Blue* are not more pertinacious than the *Black* Devil, and the Scriptures say that if you resist him, he will fly from you. Apply the same remedy to the visitations of your azure tormentors, and be assured you will defeat them.

"Adieu, my dear son; receive the blessing of your affectionate father,

"EDW. LIVINGSTON."

During the period covering the dates of these letters Mr. Livingston placidly toiled in his profession, besides managing, or trying to manage, — though with a glaring want of economy and of skill, — to improve, in order to render marketable, two sugar plantations, of which he

had become possessed, and all the while pushing hopefully towards a determination his lawsuit, now a monster of many heads. As it gradually grew evident to his mind that years must elapse before these resources would enable him to get clear of his burden, he thought of other plans, and, in 1816, undertook to furnish the government with a great quantity of live-oak timber, in satisfaction of his debt. Why he was unsuccessful in this, I have not been able to discover; but the enterprise met with some miscarriage, and an undertaking which, most likely, some shrewd and ignorant man might have managed successfully, proved beyond the capacity of one who had shown his abilities equal to so many situations and such varied emergencies. The old and heavy debt, by its accumulations of interest, went on increasing from year to year.

Lewis entirely justified the fond and unusual confidence which his father reposed in him. For three years, from the age of seventeen to that of twenty, he pursued his studies by himself at New York and Philadelphia, in the very spirit of the injunctions conveyed by the letters from New Orleans. The result in the way of mental and social accomplishments was all that the paternal standard exacted. He was of a tall frame, similar to that of his father, of swift perceptions and versatile tastes, of a sedate or slightly melancholy bearing, and of the strictest modesty and refinement. In the summer of 1818 he was commissioned, by the Governor of New York, De Witt Clinton, in pursuance of an act of the legislature of the previous session, to proceed to Quebec, to superintend the removal of General Montgomery's remains to the city of New York,—a commission which he executed with perfect address and judgment. From a minute report of his journey and proceedings on this

occasion, written to his father, I extract the following humorous account of an embarrassment which his modesty suffered: —

"So much for the General; now a word for myself. The inhabitants of Whitehall, who with the prophetic spirit of the witches in 'Macbeth' had, as I have already informed you, hailed me Colonel, gave me, as the event turned out, the title I had a claim to. The Adjutant-General, on his arrival, showed me the General Order which had been issued, in which the name of Colonel Livingston stood prominent, and explained the mystery by presenting me a Colonel's commission, which the Governor was pleased to call a reward for my good conduct. If the other grades are to be obtained at so easy a rate as this, I do not despair of one day becoming a Major-General; and, to say the truth, the honor that has been conferred on me I would willingly have dispensed with. I have felt so ashamed in opening letters directed to the colonel, that I think I could go to Quebec to un-colonel myself."

In the same letter, he compares himself upon this journey to the ass loaded with relics, of La Fontaine, — the animal that found it difficult to avoid the mistake of appropriating the homage which the passers-by only intended for the load which he carried.

On the 29th of June, Governor Clinton, who conducted the matter with a very delicate regard to the feelings of Mrs. Montgomery, wrote to inform her that the remains of the General had reached Whitehall, and that they had been received with appropriate honors by the fleet stationed at that place. He added that he had directed a military escort to accompany them to Albany. The *cortège* arrived there on Saturday, the 4th of July. After lying in state in the capitol over Sunday, the remains

were on Monday taken to New York, attended by the military escort, on board the steamboat Richmond, and on Wednesday were deposited, with due ceremonials, in their final resting-place at St. Paul's Church, under the cenotaph which had been erected by order of Congress many years before.

The Governor had advised Mrs. Montgomery at about what hour the boat, bearing the remains of her husband, would pass her house, Montgomery Place. By her own request she stood alone upon the portico at the appointed time. She had lived with the General but two years. It was then almost forty-three years since she had parted with him at Saratoga. For a third of a century out of this latter period, the waters of the Hudson, like all other waters, had been ignorant of steam-vessels. The change which in the mean time had come over her person was not greater than that which the face of her country, its government, and all the objects with which she was familiar, had undergone. Yet she had continued as faithful to the memory of her "soldier," as she constantly called him, as if she still looked for him to come back alive and unaltered. The steamer halted before her; the "Dead March" was played by the band, a salute was fired, and the ashes of the departed hero passed on. The attendants of the venerable widow now sought her. She had succumbed to her emotions, and fallen to the floor in a swoon.

At the end of the same year, after a separation of three years and a half, Lewis rejoined his father at New Orleans. The happiness of their meeting was only qualified by an intense anxiety caused by the situation of the affairs of the latter. It was a crisis in the litigation of his title to the Batture. A judgment had been rendered in his favor some time before, and he had confidently

looked forward to the enjoyment of the fruits of this success, — freedom from debt, return from exile, tranquil retirement; and he had not at first felt any apprehensions respecting an appeal which his adversaries had taken. But that appeal was now soon to be decided, and some intimations which he had lately received alarmed him much. The letters written by Lewis, after his arrival, to his aunt, Mrs. Montgomery, portray vividly the incidents of the suspense which overhung the household. Under date of the 15th of February, 1819, he told her of the catastrophe,* in the following lines:—

"The die is cast; the unfortunate event for which my last letters must in some measure have prepared you has taken place; and my father, in the evening of his days, finds himself robbed of his property, with all the forms of law and mockery of justice, — at a time, too, when, as he thought, all his difficulties had vanished, and he was soon to meet a reward for all the toil, trouble, and painful anxiety this unfortunate affair had cost him. The ways of Providence, we are told, are invariably governed by the strictest principles of justice, and we are perhaps bound to believe it; but certainly they are extraordinarily mysterious. It is difficult to reconcile with our notions of justice the uninterrupted series of misfortunes which has attended my father, whose goodness and unconquerable patience seem only to have made him more enemies, and drawn upon him greater persecutions. His usual fortitude, however, has not forsaken him on this momentous occasion; and the dignified composure with which he listened to the judgment which blasted all his hopes, and stripped him of the fruits of fourteen years' hard and painful labor, drew tears from the eyes of all

* This particular decision is reported at length, with the opposing arguments of Moreau-Lislet and Livingston in full, in 6 Martin's Louisiana Reports, 19–256; and see pp. 281–415 of the same volume.

his friends, and struck with awe his bitterest enemies, — those even who were instrumental in his ruin. He does not utter a complaint; but the shock has been too cruel and severe, and though he does not suffer his affliction to show itself by any outward signs, still it cannot but prey deeply on his mind. His health, which before was delicate, has been impaired by it, and, in his present situation, I dread to think of the difficulties he has still to encounter. The public are equally surprised and indignant at the flagrant injustice of the case, and openly express themselves upon the subject. They cannot help sympathizing for the unmerited misfortunes of a man whose worth, talents, and integrity they all acknowledge, and whose ruin they are now sensible has been effected by a few artful and designing men, who could not bear the idea of seeing the man they hated and envied add the advantages of wealth to those which nature and education had already bestowed upon him."

When Livingston returned from the court to his house, on this disastrous day, his family began to express the feelings which filled their hearts. But he soon cut the conversation on this subject short by saying, "Come, let us say no more about it, and let us have the dinner served." During the meal he preserved his usual cheerful demeanor; and afterwards, taking by the hand his little daughter, he walked with her, according to his habit, in the early evening, for an hour upon the levee, talking with her only of her lessons and the various topics which interest childhood, without allowing her to dream that any subject was resting heavily upon his mind.

This adverse decision was by no means an end of the contest respecting the title of the Batture. The whole subject was not in question, and some reservations were made by the court in favor of his title to a considerable

part of the property, to depend upon circumstances afterwards to appear. There was still much money to come out of this stubborn mine, once so promising; but its realization was now quite indefinitely postponed. The litigation grew in intricacy, till Livingston, in later years, was accustomed to say, "This matter has become so complicated that only two persons in the world now understand it, myself and Mazureau,"—referring to the leading counsel employed in the case against him. He would add, "Perhaps I ought to say Mazureau and myself; for I don't know but he understands it better than I do."

In 1820, Mr. Livingston accepted a seat in the lower house of the Louisiana legislature. A variety of notes and memoranda, in his handwriting, which I have examined, prove that he was a most active and useful member; that he served as Chairman of the Committee of Ways and Means, and that in this capacity he gave his industrious attention to a great variety of the ordinary subjects of legislation. He presently took the laboring oar in a commission, in which he was joined with Moreau-Lislet and Derbigny, charged with the task of reducing to a code the whole body of the law of the State relating to civil rights and remedies,—a task which was completed by the commissioners, whose work the legislature, in 1825, for the most part ratified. In the composition of this code there are manifest a care and an elegance hardly to be found elsewhere in the language of legislative enactments. Several titles — as those of obligations, of commercial agencies, and of partnerships — were solely from Livingston's pen, which he nevertheless industriously employed upon other parts, as well as in shaping the whole structure, and in preparing elaborate reports to the legislature of the plans and progress of the commissioners.

But the chief employment of Livingston at this time—

and perhaps the opportunity for broaching it was his main reason for accepting a seat in the legislature — was the beginning of the most important labor of his life, his system of penal law, in which he undertook a more comprehensive reform than had been suggested by any previous legislator or writer. Of this work it will be a part of my remaining task to chronicle the progress, completion, and effect.

In the winter of 1821, in the midst of these occupations, Mr. Livingston began to feel some uneasiness respecting the state of his son's health, whose symptoms appeared to threaten a premature decline. Several physicians were consulted, who united in advising the experiment of a voyage. In April, the young man sailed for France. The effects of the voyage did not prove so beneficial as had been hoped; but still much encouragement was derived from the opinions of the French physicians who were consulted. The letters of the invalid to his father — touching upon all the topics which came in his way, persons, places, and politics, science, literature, and art — wear the easy grace of an accomplished and balanced mind. He was especially attentive to the collection and transmission of all books which he thought might help his father in the particular studies in which the latter was then engaged. In a letter, dated at Paris, the 28th of June, 1821, he thus described his first interview with Lafayette: —

"You were not mistaken, my dear father, as to the reception that awaited me from this good old man. Had I been his son, it could not have been more kind and cordial. I called very early in the morning, and was introduced into a very modest little parlor, with no other ornaments than a fine engraving of Canova's statue of Washington, and a large framed tableau containing a

print of the constitutions of the different States. Here I waited until my name had been given, and your letter, which I sent in at the same time, had been read. I was then led into an adjoining bedroom, where I found the General confined with a slight attack of the gout. Upon seeing me, however, he stretched himself out of his bed, and taking my hand with both his, he drew me towards him with so much warmth, and with an expression of such kindness and good-will as really quite affected me. He spoke of all our family with great interest, particularly of Mrs. Montgomery and yourself, regretting that there was so little prospect of his ever seeing you in Europe. How delightful it is to contemplate a mind like this; to see a man, who, after having pursued such a career as Lafayette, and having reached the highest pinnacle of glory, (for I would not exchange his name for that of any man in Europe,) still possesses those social feelings which honor and dignify the human heart; to see him, in the midst of his greatness, not unmindful of the friends of his early days, nor willing to forget services and acts of kindness received in other times. In this respect, nothing that has been said of him has been exaggerated; his countenance is the mirror of perfect benevolence, and no one in examining his features and his expression could say less than 'This is a truly good man!' He is now warmly engaged with Benjamin Constant and other true friends of their country in resisting the measures adopted by the Court party, — measures which, if persevered in, he thinks will prove fatal. He is convinced, he says openly, that nothing but the recollection of the horrors of the last revolution has induced the considerate and thinking men in the country to check the disposition everywhere evinced by the people to rise *en masse*. The very nature of the present debates, which are carried on

with so much warmth as to have become even riotous, indicates an approaching catastrophe. The ministers are determined not to yield, and the people are equally determined not to be trampled upon.

"General Lafayette, who is the only person I have yet called upon, advised me to have recourse to a Dr. Moreau, a friend of his, and a man of standing in his profession. I was of course guided by his advice, and received from him a letter for the Doctor, which has obtained me the most unremitted care and attention. Dr. Moreau recommends the mode of life I am now leading, for about ten days longer, or until he has ascertained there is no danger of a second return of the ague, and then advises me to retire for some weeks to La Grange, to which I have received the most pressing invitations from the General."

The next month, in a letter announcing the transmission of several literary treasures, Lewis wrote as follows: —

"You will also receive a late production of Lord Byron's, and a work upon 'La Legislation Criminelle,' by Dupin, who appears to be acknowledged as the head of the French bar. Whatever may be his talents, his character presents itself in the most favorable point of view; for we see in him the generous advocate of Ney, of Labadoyère, of Lavallette and his deliverers, and of all who have had to contend against tyranny and injustice. His present work contains sentiments perfectly in unison with your own, and I send it under the idea that it may be useful to you in the formation of your code. As the business time of the year is now nearly elapsed, I presume you are busily engaged in your great undertaking; but it seems to me that you will hardly have got through the work before the next session of the legislature."

The following passage is extracted from a long letter written by the young invalid while on a visit to the baths at Bagnères, in August, to his aged aunt, Mrs. Montgomery: —

"I dined with the Marquis de Marbois, a few days before I left Paris. He could hardly recover his surprise upon my presenting him a letter from the widow of General Montgomery. He begged me to assure you of his gratitude for your recollection of him, and added that he would himself express to you his feelings by the first opportunity that offered. I must not omit mentioning, either, the compliment the Count de la Forest paid you. Hearing I was from New York, he accosted me in a *salon* where we both spent the evening, and made many inquiries respecting his old acquaintances, and, among others, asked whether I knew Mrs. Montgomery, describing her as '*une femme de beaucoup d'esprit et d'agrémens.*' Do not accuse me of wishing to flatter you. I but repeat the truth."

The young man remained in Europe only till the autumn, with varying hopes as to his health. He then wrote to his father that he had concluded to hasten home; but he did not reveal the fact that the object of the sudden resolution was to die in his father's arms. He sailed from Marseilles on the 10th of November, in a vessel bound to New Orleans. His letter reached Mr. Livingston but a few days before the ship arrived. These were days of intense anxiety to the father. About the middle of January, 1822, the vessel appeared, and he hastened on board, in order to see what change had come upon the beloved features. But those features he was never again to behold. Lewis, the victim of an ultimately rapid consumption, had been, on the 26th of December, buried by strangers, at sea.

It was many years after suffering this stroke before Mr. Livingston could bring himself to the point of unlocking the writing-desk in which the youth had left his papers, and which his hands had last locked. His name, it is said, never afterwards passed the father's lips. The letters of the latter once or twice alluded to the subject of his loss; but it was not in Livingston's nature to break silence over the more acute pangs of the heart.

The withering traces of this grief were long visible to all who saw him, and his family believed that its effects might have been more disastrous still, but for the impetus under which he was at the time moving towards the completion of his great work which was destined in a few years to introduce him among the brotherhood of philanthropic thinkers of all countries in his own time, and perhaps to enroll his name on the list of the recognized apostles of human progress in different ages. Of this work, as well as the circumstances and manner of its production, I shall next try to present an accurate and succinct outline.

CHAPTER XII.

THE LIVINGSTON CODE.

Mr. Livingston's Commission by the Legislature to prepare a Penal Code — His Qualifications and Zeal — Report of his Plan — Approbation of the latter by the Legislature — Completion of the Code — Its Destruction by Fire, and Restoration — State of Criminal Laws in Louisiana in 1820 — Original Features of the Livingston Code — Proposal to abolish the Punishment of Death — Details of the Proposed System — Explanatory Reports to the Legislature — Neglect of the latter to act upon the Reported Code — Effects of its Publication.

IN February, 1821, Edward Livingston was elected by joint ballot of the General Assembly of Louisiana to revise the entire system of criminal law of the State. For such a task no man ever had more complete or more comprehensive qualifications. He was fifty-seven years of age, and in the prime of intellectual strength. He had studied profoundly, and during most of his life, the Roman, the English, the French, and the Spanish laws. He was master of all the languages in which those laws are written and treated. The variety of his professional business had made him as familiar with the practical working as with the theory of each system. He had had some judicial experience in a court of both civil and criminal jurisdiction. His miscellaneous acquirements and general culture were such, in extent and variety, as have rarely, if ever, been excelled by any man of ordinary and active pursuits. He had an unusual knowledge of men in every condition, and of all characters, and especially a thorough acquaintance with the peculiar people directly interested. Philanthropy was the basis of his

own nature, and a keen interest in the affairs of humanity and society had given direction to much of his reading and reflection.

Thus prepared, he undertook the work with prodigious energy and enthusiasm. Indeed, the whole scheme was his own, conceived deliberately in his mind alone, matured there in outline before being broached to the public, and finally heralded by legislation conducted under his direction. The initial act, passed in 1820, was undoubtedly framed, word for word, by him. The entire proposed reform, and the grounds of it, are there correctly sketched in a short preamble and a single section. The former recites the "primary importance, in every well-regulated State, that the code of criminal law should be founded on one principle, namely, the prevention of crime; that all offences should be explicitly and clearly defined, in language generally understood; that punishments should be proportioned to offences; that the rules of evidence should be ascertained as applicable to each offence; that the mode of procedure should be simple, and the duty of magistrates, executive officers, and individuals assisting them, should be pointed out by law; and that, in many or all of these points, the system of criminal law by which Louisiana was then governed was defective." The latter enacts that "a person learned in the law shall be appointed by the Senate and House of Representatives at this session, whose duty it shall be to prepare and present to the next General Assembly, for its consideration, a code of criminal law, in both the French and English languages, designating all criminal offences punishable by law; defining the same in clear and explicit terms; designating the punishment to be inflicted on each; laying down the rules of evidence on trials; directing the whole mode of procedure, and point-

ing out the duties of judicial and executive officers in the performance of their functions under it." This was an uncommonly concise and exact way of laying out a vast undertaking, and could only have been the work of the man who had made himself ready for the task.

Mr. Livingston reported to the legislature, at its next session, his whole plan. He had, in the mean time, written to the Governors, and to various officers and distinguished men of all the other States, to the principal foreign ministers of the General Government, and to many publicists in different countries, asking for practical information, to be used in shaping the details of the work. His success in eliciting answers had not been encouraging, but he felt no disposition to procrastinate any part of the labor.

This report goes over the entire ground covered by the system of penal law, as afterwards perfected and submitted. From the plan there were none but formal departures in the execution.

The legislature promptly passed resolutions approving the report, and urging the author to prosecute his work according to the plan. Under this sanction he proceeded, and, two years later, was ready to submit, for legislative action, the complete product of his studies, — a system of penal law, divided into codes, books, chapters, sections, and articles, accompanied by several introductory essays, setting forth copious, exhaustive, and graphic expositions of every part.

At this important point he met with a disaster well calculated to put an end to his enterprise and extinguish his ambition. He had given the final, lingering touches to the draught of his work. An engrossed copy, for the printer, had been made. One night he sat up late to finish the task of comparing the two papers. That task

was done, and with it the great mental undertaking. Relieved of a long-borne and heavy, though not distasteful burden, he went to sleep. An alarm of fire awoke him. He rushed to the room where he had left his papers. Both draught and copy were reduced to ashes. The next morning he sat down to the work of reproducing the vanished structure. He was then sixty years of age. In two years more, the reproduction was complete, — a phœnix of what had been destroyed.

In order to measure the importance of Livingston's project, it is necessary to look at the sources, the history, and the state — as he found them — of the criminal laws of Louisiana.

Early in the last century, the French made some beginnings to settle the territory of Orleans, in pursuance of a plan to establish and fortify a chain of possessions from Canada to the mouth of the Mississippi River. But the ground was claimed by Spain, as being part of Florida, by right of prior conquest and possession. There was no distinctness, however, in the boundaries or geography of the immense wilderness in the midst of which the territory lay. As a result of these circumstances, the settlement proceeded with accessions of citizens of France and Spain, and from the neighboring colonies of both nations. Definite government became necessary, and negotiations were had between the two crowns, which, in 1763, ended in mutual cessions of distinct regions, that of Orleans going to Spain. In 1769, that power formally promulgated its whole system of laws as controlling the new province. Under those laws it remained when the country was retroceded to France. That transaction was not consummated until 1803, and then only provisionally and to enable Napoleon to deliver a title to the United States. The laws of Spain were

left unrepealed in the territory by the double transfer, it being "an established rule of national law that on the transfer or conquest of a country the municipal laws remain in force until they are expressly changed by the new government."

Congress passed an act of October 31, 1803, authorizing the President to take possession of the new province, and vesting in officers to be appointed by him the same military, civil, and judicial powers that were exercised under the Spanish government. The next year, another act established a government for the territory, extending to it the operation of certain laws of the United States,—such as those securing the trial by jury, and the writ of *habeas corpus;* but declaring that all laws in force in the Territory, at the passage of the act, and not inconsistent with it, should continue in force until altered, modified, or repealed by the legislature. The same provision was repeated in the act of Congress of 1805, which gave the Territory another grade of government; and when it ceased to be a Territory, in 1812, a like provision went into the constitution of the new State.

No further abrogation of the Spanish penal laws had in 1820 been enacted in Louisiana, except that the Territorial legislature had, in 1805, by law specified a limited number of ordinary crimes and misdemeanors, and declared that the offences so enumerated should be construed and tried according to the common law of England. Of course, other offences were legally left for definition and punishment to the laws of Spain in force when she parted with the province. These laws had been the growth of ages, some of them of very dark ages. Many of them might be practically obsolete in Louisiana, because too cruel or too absurd to be executed there; others, not so bad in themselves, might be disregarded

by the courts and by public opinion, or might be unknown to either judges or people. Nevertheless, they remained strictly a part of the law of the State, — a useless and perhaps dangerous part. It is interesting to glance in review at some of these penal laws, lingering far from home, upon uncongenial soil, scarcely recognized, yet not formally put away.

One of the most curious heads of these unrepealed laws was that called *Enfamamiento*, forming a title in the seventh book of the *Partidas*. By its provisions, infamy was denounced indiscriminately upon persons of various classes, including children of illegal marriages, suitors or advocates incurring rebuke, whether just or not, from a judge in court, slanderers, unfaithful depositaries, widows marrying before the expiration of a year's mourning, their too impatient new husbands, procurers, comedians, mountebanks, usurers, gamblers, and buffoons, — an extraordinary jumble, truly, for the Anglo-Saxon mind to contemplate. This kind of infamy attached, not upon conviction only, but from the fact. It worked exclusion from office, and incapacity to testify in a court of justice. These disabilities had been but partially remedied by any express enactment in the constitution or statutes of Louisiana.

Nor had legislation touched those provisions of the *Partidas* which, under the head of *falsedades*, or *crimen falsi*, made it criminal and punishable with banishment and confiscation of all property for an advocate to betray the secrets of his client, or designedly to cite the law falsely; for a notary to deny the deposit of any writing, or to hide or deliver it to another, or to read or publish it, if deposited with him to be kept secret; for a judge knowingly to give judgment contrary to law; for any person to say mass without ordination; for any one to change his name by taking one more honorable;

or for a woman to feign maternity, and produce a counterfeit heir.

The industry of this old code had, under the title of homicide, (*des los omezillos,*) provided for punishing, in cases of fatal results, the malpractice of quacks, and the blunders of physicians, surgeons, or apothecaries, as well as the administering of drugs, either for the destruction of the unborn, or for the opposite purpose of overcoming barrenness.

Defamation (*deshonras*) was a very comprehensive title of the *Partidas.* It included all acts designed to degrade or dishonor another, whether by writing, printing, speech, gesture, assault and battery, overstrained gallantry, or inflicting smoke upon a neighbor overhead, or water upon a neighbor nearer the ground.

By the same code, not only were adulterers, seducers, and their agents punishable with stripes and confinement, banishment, confiscation, or death, but their offences were subjected to some peculiarly severe definitions and to some specially hard rules of evidence. And these enactments had not been repealed in Spain or in Louisiana.

There were even left some remains of those parts of the old system which denounced bloody penalties upon the crimes of Judaism, heresy, and blasphemy, and which regulated torture, some vestiges of the pillory, of public whipping, and of burning to death; and some horrors, in the way of punishments strictly legal, had been, under the Territorial government, actually imposed in some parishes of the province, by magistrates of an antiquarian turn, and disposed

> "To awaken all the enrolled penalties
> Which had, like unscour'd armor, hung by the wall,
> And none of them been worn," *

* This use of the passage here quoted I borrow from one of Livingston's communications to the legislature. In this instance, as in

revealing to the citizens of the State the common danger that judges might be found, at any time, and when such an evil would be least anticipated, determined

> "To put some drowsy and neglected act
> Freshly on"

such as should come within the range of their prejudice, caprice, or resentment.

To sweep away all this rubbish, with the system to which it belonged, or, in retaining any portion of the latter, to reduce that portion to certainty and intelligibility, was the first object of the Livingston Code. On this subject, the following is part of the language addressed by the author to the law-makers:—

"Be assured, legislators, of this truth, that there can be no law of which the existence is a matter of indifference. It must remain in your code for good or for evil: for good, if it be a wise law, and carried into effect; for evil, whether it be good or bad, if it remain unexecuted. In the one case, the people are taught the dangerous lesson, that the best precepts may be disregarded with impunity; in the other, they are subjected, when the danger is least apprehended, to the unjust operation of a forgotten law. Indeed, there is scarcely a greater reproach to the jurisprudence of a nation than the existence of obsolete laws; that is to say, laws that are none, — laws that are no rule to guide our actions, because they are unknown to, or forgotten by, those upon whom they are to operate, but which may yet be used to punish them for their contravention, because they are known and remembered by those who are empowered to enforce them, whenever the malice

many others, he seems to have quoted from memory, and he did not exactly follow his author. Indeed, in quotations of this sort he often, if not habitually, did the same thing, appearing to content himself with the substance of a passage, and to attend little to its precise form, as if he intended to give the quoted author credit for his thought rather than for his language.

of a prosecutor, or the ignorance, corruption, or party feeling of a judge, may induce him to draw the rusty sword from its scabbard. . . . . Hear what the wise Bacon says on this subject, 'The prophet says, *it shall rain snares upon them;* but of all snares, the snares of the law are the worst, especially of the penal law; when they have become useless, either by the accumulation of their number, or by the lapse of time, they are not a light to guide our steps, but a net to entangle them;' and 'Here is a further inconvenience of obsolete penal laws; for this brings on a gangrene, neglect, and habit of disobedience upon other wholesome laws, that are fit to be continued in practice and execution, so that our laws endure the torment of Mezentius, the living die in the arms of the dead.'"

But the Spanish system did not furnish all the rust and rubbish which Livingston aimed to remove. There was much in the common law of England — laconically introduced and referred to, for definition, evidence, and procedure in certain cases, as we have seen, by the act of 1805 — which he desired to lop away from the jurisprudence of the State, as well as much that he wished, while retaining it, to clothe with perspicuity, simplicity, and certainty. He reviewed that system, — with which, at the expense of long study and practice, he was profoundly familiar, — without reverence on the one hand, and on the other without prejudice, but in the spirit of a reformer as radical as enlightened. He wished the new State to be rid of the vagueness, mystery, and dependence on uncertain oracles, which centuries have piled upon "the perfection of reason," and to receive, in their place, precise, plain, and full regulations sufficient for all cases, gathered in a single book, where everything good in each of the previous systems might

be caught and preserved in a shape to be understood, and where written law should, so far as possible, supersede precedent, custom, and tradition. His scheme, in part, was, instead of leaving the laws of crime and punishment what they had been, a mystery to lawyers and judges, to bring them directly to the knowledge and comprehension of the people.

The conscientious devotion of Livingston to this leading idea is illustrated by the painstaking way he adopted of escaping ambiguities of language in the enactments he proposed. This was to submit the entire code, after completion, to men not versed in the phraseology of the law, and to mark for explanation every word not fully or accurately understood by them. The words so marked were, in the body of the work, always printed in a peculiar character, to show that they were the subject of explanation in a separate place, the Book of Definitions; and each word thus marked received all necessary attention in that book.

The clearness and certainty for which Livingston strove went beyond the outward form to the inner substance. He proposed enactments expressly abolishing all constructive offences, and all distinctions between strict and liberal constructions of penal statutes; forbidding every departure from the plain letter of the written law, and requiring the courts, on the trial of a criminal charge prosecuted under an ambiguous act, to acquit the accused, and immediately report the case to the legislature.

One of the main directions in which he labored to have Louisiana lead the age was humanity. Remedial, as against vindictive laws, have had no abler and no more ardent advocate. Every part of his work shows this, but it is chiefly apparent in his efforts for the total abolition of the penalty of death, and in his plans for the

reformation of offenders. By the former, he added largely to the then existing stock of known facts and arguments bearing upon the subject; and in the latter, he presented views entirely original. The penalty of death had not been done away by any of the United States, then twenty-four in number; and, though the prison systems of several of the States were in advance of that of Louisiana, none of them had realized the prominent ideas of Livingston.

The catholicity of the reformer's spirit, and the practical nature of his philanthropy, are visible throughout his treatment of these topics. With him, the importance of the proposed changes did not rest upon any narrow doctrine or precise theory of penal law. He examined with keen interest the several conflicting theories concerning the authority for all punishment, but did not feel any necessity to commit himself unreservedly to either. Such questions as whether the right to punish criminals depends upon an implied contract between society and its members, or merely upon the ground of utility, or upon the principle of abstract justice alone, and whether the true object of exercising the right be solely to punish, or solely to reform, or both punishment and reformation, and in what degrees, gave him no trouble, because he held that, whatever discord in argument these conflicting doctrines might lead through, yet they could not avoid harmony in conclusion. In this way he dismissed the casuistry of the subject, which, after all, he believed had its origin rather in a confusion of terms than in any real foundation for dispute.

The grounds upon which he urged the abolition of the penalty of death, though humane in substance, were not those of a dogmatist or sentimentalist. He looked upon the true interests of society as paramount to all consid-

erations in the criminal's behalf. He offered a substitute which, whatever might prove its effect as a public example, would certainly not have held out, to the ordinary transgressor, an alternative much less terrible than death. It was imprisonment for life in a solitary cell, to be painted black without and within, and bearing a conspicuous outer inscription, in distinct white letters, setting forth the culprit's name and his offence, with its circumstances, and proceeding with a fearfully graphic description of his doom:—"HIS FOOD IS BREAD OF THE COARSEST KIND; HIS DRINK IS WATER MINGLED WITH HIS TEARS; HE IS DEAD TO THE WORLD; THIS CELL IS HIS GRAVE; HIS EXISTENCE IS PROLONGED THAT HE MAY REMEMBER HIS CRIME, AND REPENT IT, AND THAT THE CONTINUANCE OF HIS PUNISHMENT MAY DETER OTHERS FROM THE INDULGENCE OF HATRED, AVARICE, SENSUALITY, AND THE PASSIONS WHICH LEAD TO THE CRIME HE HAS COMMITTED. WHEN THE ALMIGHTY, IN HIS DUE TIME, SHALL EXERCISE TOWARDS HIM THAT DISPENSATION WHICH HE HIMSELF ARROGANTLY AND WICKEDLY USURPED TOWARDS ANOTHER, HIS BODY IS TO BE DISSECTED, AND HIS SOUL WILL ABIDE THAT JUDGMENT WHICH DIVINE JUSTICE SHALL DECREE."

The most important, as well as the most original feature of Livingston's work was his proposal to enlarge the scope of penal legislation so as to take in, not only such measures as look to the punishment of crime after it is committed, but also such as tend, in any way, however remotely, to preclude its commission, — to bring under one central direction, crime, vagrancy, mendicity, and all forms of pauperism, — in short, to blend into a single system the whole machinery of poor-house, workhouse, and bridewell. In the universal separation and independence of these establishments he thought he dis-

covered a chief cause of the failure in the proper efficiency and value of each one. The administrators of penal laws have always been restricted to the protection of society against crime only by waiting, watching for, and then punishing its commission, while the administrators of poor-laws have been limited to the business of feeding without controlling their subjects; from which it has resulted that one of these departments has proved a preparatory school for the other, and, between the two, the children of poverty and crime have been bandied forward and backward, without due benefit either to themselves or to the community. The ranks of those who commit the more positive crimes derive almost all their recruits from those who cannot or who will not honestly toil, and those who, though willing to labor, yet lack employment. He held that society is bound to support such of its members as are incapable of supporting themselves, and has a corresponding right to test the genuineness of that incapacity, — a right which cannot be exercised without at the same time exercising a strict tutelage and thorough control over all who either are incapable of self-support or pretend to be so. A true system of penal law, therefore, in his view, should deal with the entire subject, and should confer upon its ministers a pervading and organized authority over the evil from top to foundation. A little vigor at the beginning might save a good deal of rigor in the end. Under such a system, in full operation, beggars and vagrants could not roam abroad, plying their vocations. The law would immediately take custody of all such, and assign to each his place. Those unable to work would receive simple support. Those able and willing to perform labor, but unsuccessful in getting it, would be furnished with temporary occupation and subsistence. Those competent,

but unwilling to earn their livelihood, would do so by compulsion. All these would be classified and separated in such a way as to guard, as far as practicable, against social contamination, an evil against which Livingston took constant pains to provide in every part of his system. Illegal idleness would not then possess the charms which freer systems impart to it; and would, of course, be shunned by many whom it now attracts. Under such a code, whether the agents of the pauper establishment would have more business or not, the criminal courts would certainly have less.

The machinery proposed for the working of the system comprehended:

A House of Detention;

A Penitentiary;

A House of Refuge and Industry; and

A School of Reform;

all under the superintendence and conduct of one Board of Inspectors. The House of Detention was designed as a place of simple imprisonment, with two separate departments: the first to hold only misdemeanants, and persons committed for trial upon minor charges or as witnesses; the second, those committed for crimes of the higher grades. Its regulations were intended to discriminate between culprits and witnesses, and to alleviate to the latter, as far as practicable, the discomfort and disgrace of confinement.

The Penitentiary was a subject of Livingston's most intense study. He obtained copious information and statistics from the other twenty-three States, as well as from Europe, and minutely examined and reviewed the whole history of the systems of Massachusetts, New York, and Pennsylvania. He approved of no known system, though he acknowledged the value of parts of several. His con-

clusion was, that, under the best scheme of penal jurisprudence to be devised, the inflexible sentence of the law upon every convict of a penitentiary offence should be confinement in a solitary cell, with sufficient wholesome but coarse food, but without occupation or any human attention, except needful ministration to physical wants and private religious instruction. And this dreadful penalty should be literally enforced against all who are too obstinately depraved to accept, after a time, certain mitigations on condition of good behavior. But to those who might learn to crave occupation, improved diet, books, and some taste of society, and who at the same time might manifest a willingness to earn these kinds of alleviation, the law should gradually unfold the following inducements to perseverance in labor, obedience, moral conduct, and desire of reform, namely: —

1. A better diet.

2. Partial relief from solitude, and the means of education by the visits and lessons of a teacher of the prison.

3. Permission to read books of general instruction.

4. The privilege of receiving the visits of friends or relations at proper periods.

5. Admission into a class for instruction, after a period of good conduct that shall evince a sincere desire to reform.

6. The privilege, after a long probation, of laboring in society.

7. A proportion of the proceeds of his labor on his discharge; and

8. A certificate of good conduct, industry, and skill in the trade he has learned or practised in prison, which may enable him to regain the confidence of society. These advantages, to be gained by good conduct, should be liable to suspension and forfeiture for idleness or ir-

regularity, and ought to be dispensed only in accordance with severe and unbending regulations.

It was Livingston's earnest belief that such a gradual education of the head and the heart of the confined criminal, though it could not be expected to produce uniform reformation, would yet cause most convicts to graduate from the penitentiary with softened and improved characters, and often work a total reclamation to industry and virtue. These opinions, while he disclaimed any visions of millennial results from any possible system, he pressed upon the legislature with fervor and eloquence. The following paragraph is from his introductory report on this subject: —

"Let it not be said that this is a theory too refined to be adapted to depraved and degraded convicts. Convicts are men. The most depraved and degraded are men; their minds are moved by the same springs that give activity to those of others; they avoid pain with the same care, and pursue pleasure with the same avidity, that actuate their fellow-mortals. It is the false direction only of these great motives that produces the criminal actions which they prompt. To turn them into a course that will promote the true happiness of the individual, by making them cease to injure that of society, should be the great object of penal jurisprudence. The error, it appears to me, lies in considering them as beings of a nature so inferior as to be incapable of elevation, and so bad as to make any amelioration impossible; but crime is the effect principally of intemperance, idleness, ignorance, vicious associations, irreligion, and poverty, — not of any defective natural organization; and the laws which permit the unrestrained and continual exercise of these causes are themselves the sources of those excesses which legislators, to cover their own inattention or indolence

or ignorance, impiously and falsely ascribe to the Supreme Being, as if he had created man incapable of receiving the impressions of good. Let us try the experiment, before we pronounce that even the degraded convict cannot be reclaimed. It has never yet been tried. Every plan hitherto offered is manifestly defective, because none has contemplated a complete system, and partial remedies never can succeed. It would be a presumption, of which the reporter's deep sense of his own incapacity renders him incapable, were he to say that what he offers is a perfect system, or to think that it will produce all the effects which might be expected from a good one; but he may be permitted, perhaps, to believe, that the principles on which it is founded are not discordant; that it has a unity of design, and embraces a greater combination of provisions, all tending to produce the same result, than any that has yet been practised. Whether these principles are correct, or the details proper to enforce them, the superior wisdom of the legislature must determine. But to think that the best plan which human sagacity could devise will produce reformation in every case, that there will not be numerous exceptions to its general effect, would be to indulge the visionary belief of a moral panacea, applicable to all vices and all crimes; and although this would be quackery in legislation, as absurd as any that has appeared in medicine, yet, to say that there are no general rules by which reformation of the mind may be produced, is as great and fatal an error as to assert that there are in the healing art no useful rules for preserving the general health and bodily vigor of the patient."

But Livingston perceived and felt the radical danger that all the reformation which might be achieved by the proposed discipline would speedily be done away, if no

provision should be made to counteract the effect of the practical outlawry which attaches to the discharged convict, and prevents him from procuring honest employment. To preclude the necessity of a relapse into evil courses, arising from inability to find virtuous society and lawful work, the doors of the more honorable side of the House of Refuge and Industry were to be opened to receive the graduate of the penitentiary carrying out with him a certificate of good conduct. That establishment was to have two departments, one for voluntary, the other for forced labor. In the former, occupation with compensation was to be given to those able and desiring to earn their livelihood, but lacking employment. The latter was to be a receptacle of able-bodied beggars and wilful vagrants, and to it all such were to be consigned the moment of being detected in the practice of their vocations. Both classes of inmates were to receive not only the hospitable care of the establishment, but, on leaving it, credentials — if earned — attesting their good conduct.

One other establishment — the School of Reform — would complete the proposed penitentiary system. This was designed to be the place of punishment of all convicts sentenced while under eighteen years of age to any term of imprisonment less than for life, and for the confinement of all vagrants committed under the same age. It was to contain separate divisions for the sexes, a separate dormitory for each prisoner, courts or shops for the employment of the inmates, a school-room for each division, and an infirmary. Every inmate was to be taught some mechanic art, and either persuaded or forced to ply it industriously, with only certain intermissions, appropriated to instruction, to meals, to relaxation, and to rest. A competent teacher was to be a part of the establishment. The discipline was to be

persuasive, so far as persuasion would serve, but coercive when required by the bad conduct of those

> "upon whose nature
> Nurture can never stick."

The inmates of the School of Reform were to be discharged only on the expiration of their terms of service, or by apprenticeship, with these qualifications: that, notwithstanding the expiration of a term of service prescribed in a sentence, no discharge (except by apprenticeship) should take place of a male under twenty-one, nor of a female under nineteen years of age; and that the discharge by apprenticeship should not be made except after two years' residence in the institution, and a certain proficiency in elementary education, nor without a written recommendation of the apprentice, signed by the warden and approved by the inspectors.

The work of Livingston, in its final shape, was styled "A System of Penal Law," and was divided into a Code of Crimes and Punishments, a Code of Procedure, a Code of Evidence, and a Code of Reform and Prison Discipline, besides a Book of Definitions. Each of the codes was subdivided into titles, chapters, sections, and articles, with headings, distinguishing their subjects, so as to make easy the task of reference. And each code was prefaced with general provisions, in the form of enactments, declaring the principles and purposes controlling the legislature in promulgating the system.

Every part of the work evinces the most elaborate attention to the cardinal objects of preserving a complete unity of design, of shunning ambiguity and mystery, of preventing, rather than avenging crime, and of letting "mercy season justice."

The several addresses of Mr. Livingston to the legislature, in the form of separate introductions to his sys-

tem, and to each of the codes embraced in it, added to the first report of his plan, would fill several volumes like this. In all of them not a dull sentence can be found. Their uniform style is adapted to attract a popular interest, and, at the same time, to satisfy a critical taste. It makes no departures from dignity, and takes to itself no stilts. It deals in plentiful illustration, and even ornament, but abounds in directness and plain force. It never lacks the strong flow of a full stream. These productions, if their author had left no other, would demonstrate that America has not produced a more elegant, more correct, or more forcible writer of the English language than Edward Livingston.

The legislature of Louisiana has not acted upon this system of law, prepared by its authority, upon principles stamped with its express sanction. The progress of the work brought out a good deal of opposition, conservative, economical, disputatious, or pragmatical. All this would, possibly, — though this is matter of much doubt, — have yielded before the author's personal influence, if he had remained at home; but his destiny took him to Washington, and invited him to a second political career; he accepted the call, and ceased practically to reside in Louisiana.

But his performance did not meet the same neglect from the world at large. Its publication brought him immediate and wide fame. Only an eminent American lawyer and politician before, he now took secure rank among the philosophers and reformers of the first grade in all civilized countries. Many of his separate recommendations have been adopted by various legislatures, not only of the United States, but of other nations, both American and European. But as a system, upon the importance of whose pervading unity and central vigor he placed

such earnest stress, it has yet to be tried by some enterprising government, desiring beneficent progress, and willing to lead the world in the march of reform. Of some kind of advancement in penal legislation there is still everywhere the sorest need. A great deal of barbarism characterizes the old and tenacious abuses which cling to the administration of penal justice: in the blind adherence to arbitrary technical rules; in the reliance upon uncertain precedents; in the ferocity of some punishments, and the want of discrimination among others; in the detention of witnesses; and in the promiscuous confinement of the young and the old, the tender and the hardened, the innocent and the guilty. If, in the progress of the world, even a partial remedy for these chronic abuses shall be found in some system substantially like that of Livingston, his name will live to be historically and permanently associated with the names of Bacon, of Montesquieu, of Beccaria, and of Bentham.

CHAPTER XIII.

THE REPUTATION OF THE CODE.

IF personal ambition had been Livingston's principal motive, in the patient studies and labor by which he produced his system of penal law, his reward would have been as ample as it was prompt. The publication of his plan gave immediate celebrity to his name in America and in Europe. It was reprinted in England,* by a stranger to the author, Dr. Southwood Smith, and at Paris, in the French version of Davezac,† elaborately edited by the eminent Taillandier. German reviewers reproduced it almost in full in their notices. The "Westminster Review" closed an article upon the London edition with the following paragraph: —

"We cannot conclude this notice of his labors with-

* *Project of a New Penal Code*, etc., etc. London, 1824.

† As was mentioned in the preceding chapter, the legislature of Louisiana required that the projected code should be prepared and presented in both the French and English languages, a requisition which was fulfilled. The French version was a translation from the English of Livingston, by M. Jules Davezac, an uncle of Mrs. Livingston, a learned man, and president of the first college established at New Orleans. In this work the translator evinced a singularly exact comprehension of his author's meaning, even to minute and technical particulars. What made this very remarkable was the fact that M. Davezac had acquired the English as one acquires a dead language, was entirely unacquainted with its sounds, and never learned to comprehend the simplest conversation in that tongue. It was chiefly through this version that the code and Mr. Livingston's various explanatory reports became known upon the continent of Europe. The French critics commended the general purity of its style, and pointed out only three or four instances of what they might have termed "Americanisms," — the use of words in senses to which in France they were not applied, as "*commission*," for "*perpétration*," "*acquit*," for "*accomplissement*," and "*instiguer*," for "*exciter*." With these reservations, the composition was pronounced to be a marvel for a production coming from the Western wilderness.

out joining our feeble voice to that of the legislative assembly for which he is preparing this code, and earnestly soliciting Mr. Livingston to prosecute his work in the spirit of this report. In England, the eyes of its most enlightened philosophers, of its best statesmen, and of its most devoted philanthropists will be fixed upon him; and in his own country, his name will be had 'in everlasting remembrance,' venerated and loved. He is one of those extraordinary individuals whom nature has gifted with the power, and whom circumstances have afforded the opportunity, of shedding true glory and conferring lasting happiness on his country, and of identifying his own name with the freest and most noble and most perfect institutions." *

During the years in which Mr. Livingston was engaged in twice filling up the body of the work of which the plan presented to the legislature was an outline, his opinions upon minor questions of criminal legislation were looked for and published, as soon as known, by the most prominent writers upon jurisprudence, especially in Germany and France, as the opinions of one of the foremost publicists of the world.

When the work was at length completed and published, though neglected by the legislature of Louisiana, a very different reception awaited it from the general public, at home and abroad. The manner in which the task had been executed universally satisfied the high expectations which had been formed and expressed after the publication of the plan. The name of Livingston was now become illustrious. Victor Hugo wrote to him, "You will be numbered among the men of this age who have deserved most and best of mankind." † Vil-

* *Westminster Review* for January, 1825.

† Vide *post*, p. 405.

lemain declared that the proposed system of penal law was "a work without example from the hand of any one man." * Jeremy Bentham proposed that a measure should be introduced in Parliament to print the whole work for the use of the English nation.† Taillandier wrote: "The moment approaches when the legislature of Louisiana will discuss the proposed codes, prepared with so much care by Mr. Livingston; we hope that his principles will be adopted, and that State endowed with the noblest body of penal laws which any nation has hitherto possessed." ‡

It would be easy to multiply the quotation of similar expressions, by writers of the highest authority, illustrative of the reputation and influence of this unenacted code. But let it suffice to mention further the deliberate opinion, recently published, of an English author § most competent to pronounce such an opinion, that Livingston is "the first legal genius of modern times."

The new law-giver received every kind of evidence of the general appreciation in which his labors were held. From reviews and journals, and from the leading contemporary writers upon jurisprudence, there was a strong current of exalted, almost unqualified praise. Many of the most prominent statesmen of the world wrote to him in terms of appreciative commendation. He received autograph letters upon the subject of his work from the Emperor of Russia and the King of Sweden.‖ The

* Vide *post*, p. 404.

† *Bentham's Works*, edited by Bowring, vol. xi. p. 37.

‡ *Revue Encyclopédique*, tom. xliv. pp. 214, 215.

§ Dr. H. S. Maine, formerly Professor of Civil Law in the University of Cambridge, and author of the profound work on Ancient Law. For the expression quoted in the text vide *Cambridge Essays*, 1856, p. 17.

‖ The following are copies of these royal letters: —

From the Emperor of Russia.

"J'ai été, Monsieur, infiniment sensible à la lettre que vous m'avez écrite. Si l'Empereur Alexandre de glorieuse mémoire vivoit encore, s'il n'avait été tout à coup enlevé à l'amour et aux espérances de la Russie, il aurait, j'en suis sûr, accueilli,

King of the Netherlands sent him a gold medal, with a eulogistic inscription. The government of Guatemala translated one of his codes, — that of Reform and Prison Discipline, — and adopted it word for word.* In his honor, the same government gave to a new city and district, forming a part of its territory, the name of Livingston.

When the exiled Governor of Hungary, Louis Kossuth, released from the imprisonment at Kutaiyeh, was enjoying in this country the hospitable ovation which all classes accorded to him, he was entertained at a public dinner by the bar of the city of New York. In a speech which he then delivered he took occasion to express his views

avec gratitude, l'important travail dont vous lui destiniez la communication. Héritier de ses principes et de ses vues, pénétré comme lui de la nécessité d'assurer à ma patrie le bienfait d'un code de loix qui lui manque, je m'empresse de vous remercier et pour votre lettre et pour l'ouvrage qui l'accompagnoit. Un de mes premiers soins a été d'attacher à ma personne et de placer en quelque sorte sous mes propres yeux la commission chargée d'achever l'œuvre entreprise par l'Empereur Alexandre. Connaissant vos lumières et votre instruction profonde, j'ai fait communiquer aussitôt à cette commission les projets de code que vous m'avez transmis. Elle y trouvera, je n'en saurai douter, de judicieuses idées, d'utiles matériaux, et c'est dans cette conviction que je vous offre ici, Monsieur, l'assurance de ma parfaite estime.

" NICOLAS.

" *Moscow*, le 31 Août, 1826.

" M. ÉDOUARD LIVINGSTON."

From the King of Sweden.

" Monsieur Livingston : J'ai reçu la lettre que vous m'avez addressée ainsi que l'ouvrage sur la législation qu'elle m'annonce ; c'est avec une véritable satisfaction que je vous exprime mes remerciemens et de l'une et de l'autre. La juste réputation dont vous jouissez parmi vos compatriotes est partagée de tous ceux qui étudient vos ouvrages ; elle acquerra de nouveaux éloges chez nous par la communication que j'ai faite de votre code à notre comité des loix. La tache que vous vous êtes imposée est digne de votre philanthropie et de vos profondes connaissances. Elle doit être appréciée par tous ceux qui voient dans la clarté et les principes généreux de la législation une nouvelle garantie de l'ordre social et des droits de citoyen. Continuez, Monsieur, a remplir cette belle et honorable vocation ; la presqu'île Scandenave y trouvera un motif de plus pour resserrer les liens de confiance et de bonne harmonie qui subsistent si heureusement entre elle et les États Unis du Nord de l'Amérique.

" Je saisis avec plaisir cette occasion pour vous exprimer, Monsieur de Livingston, les sentimens avec lesquels je suis

" Votre affectionné

" CHARLES JEAN.

" *Christiana*, le 11 Août, 1832."

* *Codigo de Reforma y Disciplina de las Prisiones.* Guatemala, 1834.

upon the subject of codification, and began by saying that America had "a great authority for codification,— Livingston." Many years before that, the name of the author of the "System of Penal Law for the State of Louisiana" had become one of three or four American names the best known and most respected in Europe.

At home, though not one of our leading jurists or statesmen kept pace with Livingston's ideas, as promulgated in his proposed code, and especially with his scheme for abolishing the penalty of death, he received from all sides clear proofs of a proud admiration in which he was held by the wisest and best of his countrymen. This sentiment was expressed to him directly by many prominent men, including Kent, Story, Marshall, Madison, and even Jefferson. Chancellor Kent wrote to him often at this period, discussing at large, and with warm interest, many of the details of the new work. The following is an extract from one of these letters, dated in February, 1826: —

"I owe every obligation to you for your continued friendship, and my sense of your talents and learning has been constantly on the increase from 1786 to this day. It is very likely I shall have some old-fashioned notions and prejudices hoary with age and inflexible from habit; but I am determined to give you what I think, on the reading of all the work, and to deal out my praise and censure just as my judgment dictates.

"In the mean time, however, and before the war has commenced, and while the chain of friendship remains unbroken, suffer me to enjoy the parting, lingering rays of an amicable intercourse, and to assure you," etc.

And a later communication from the same hand contains the following paragraphs: —

"Though I shall always be dissatisfied with any code

that strips the courts of their common-law powers over contempts, and ceases to be a wholesome terror to evil-minded dispositions by the total banishment of the axe, musket, or halter from its punishments, yet I admit the spirit of the age is against me, and I contentedly acquiesce.

"You have done more in giving precision, specification, accuracy, and moderation to the system of crimes and punishments than any other legislator of the age, and your name will go down to posterity with distinguished honor."

But perhaps nothing can more strikingly illustrate the position which Livingston now held before the country and the world than the fact, that, at a time when his debt to the government remained wholly unpaid, and thus while the original cause of Jefferson's prejudice against him was still outstanding in all its force, — a cause which, in ordinary circumstances, would have increased its fruits, like accumulations of interest, — the latter, from his retirement at Monticello, closed a long letter to him, of which the whole will be given at a subsequent page, with the following assurance: —

"Wishing anxiously that your great work may obtain compleat success, and become an example for the imitation and improvement of other States, I pray you to be assured of my unabated friendship and respect."

And in the same letter the venerable ex-President said to his ancient friend, — long estranged, as we have seen, but now reconciled, as will presently appear, — "I have attended to so much of your work as has heretofore been laid before the public, and have looked with some attention also into what you have now sent me. It will certainly arrange your name with the sages of antiquity."

CHAPTER XIV.

SIX YEARS IN THE HOUSE AGAIN.

Election of Mr. Livingston to Congress — His Position in the House — Speech on Roads and Canals — Letters from Jefferson and Du Ponceau — Intimacy between the latter and Livingston — Letters to Du Ponceau — Completion of the Livingston Code — Destruction of the Draught — Energy and Fortitude of the Author — Industry in reproducing the Code — Letter from Webster — Speech on the Bill to amend the Judicial System, and on the Equality of Rights among the States — Vindication of Chancellor Livingston's Services in the Purchase of Louisiana — Close Attention of Mr. Livingston to the Ordinary Business of Legislation — Payment of his Debt to the Government — Manners and Social Habits — General Jackson in the Senate — Growth of the Intimacy between him and Livingston — A Letter from the General — Zealous Support of him for the Presidency by Livingston — Public Dinner and Speech at Harrisburg — Defeat of Livingston as Candidate for Reëlection to a Fourth Term in the House of Representatives — His Election to the Senate.

WHILE Livingston was intently occupied in his great work, his name was brought forward by his friends as a candidate for the post of Representative from the first district of Louisiana in the eighteenth Congress. To the member from the New Orleans district, especially if unanimously chosen, there belonged at Washington about as much political weight as if he were one of the two members of the Senate from the same State. The election was in July, 1822, and as no opposition arose, and no rival candidate appeared, was unanimous. He was afterwards twice reëlected; so that he sat in the House of Representatives during six sessions, beginning with that which opened in December, 1823. Thus, after the lapse of nearly a quarter of a century, — an interval

of turmoil deeply colored by disappointment and affliction, — he returned to the chamber in which his triumphs as a young statesman and Republican orator had been achieved. In a letter to his friend Du Ponceau he wrote: —

"The unanimous voice of my fellow-citizens sends me to Congress, where I very much fear, however, I shall be of no use. So long retired from public affairs, I am an utter stranger to the politics of the day, and my old-fashioned Republican ideas, I fear, will find the less favor, because, so far from being weakened by my age and experience, they every day acquire new force."

The position of Mr. Livingston in the House was now one of the highest and truest dignity. His reputation was not only national, but was just becoming something more. He was past the ordinary ambition for oratorical display, but zealous in the discharge of all the duties of a member. He was steadily in his seat, ready to speak to all questions upon which he thought he could throw light, watchful of the special interests of Louisiana, and industrious in efforts to improve the Federal laws. Although such men as Randolph, Clay, and Webster were members of the House, and Van Buren and Benton were senators, he was looked upon as an acquisition of the first importance in the national legislature. And this in spite of the fact that his unhappy debt to the government was not yet paid. A striking proof of the universality of the respect in which he was held is furnished by the following letter, which, a few months after taking his seat in the House, he received from the man at whose hands he had suffered the largest and most cruel injuries, — injuries which he had not only long and keenly felt, but had eloquently and strenuously denounced. Jefferson was now within two years of his end, retired, strait-

ened in circumstances, and, as to active political influence, off the scene.

"Superfluous lags the veteran on the stage."

It was in these circumstances that Livingston, in the prime of his strength and with rising fortunes, revived and cherished towards his old adversary the sentiments of his youth, and paid him such attentions as this letter acknowledges. How different would have been the feeling and conduct of the average man of the world, — not to say, of the average Christian gentleman! It is plain that if in this instance the resentment which a sense of injustice suffered commonly inspires had ever found a lodgment in his breast, no trace of it was left remaining there.

"*Monticello*, April 4, 1824.

"DEAR SIR: It was with great pleasure I learnt that the good people of New Orleans had restored you again to the councils of our country. I did not doubt the aid it would bring to the remains of our old school in Congress, in which your early labors had been so useful. You will find, I suppose, on revisiting our maritime States, the names of things more changed than the things themselves; that though our old opponents have given up their appellation, they have not, in assuming ours, abandoned their views; and that they are as strong nearly as ever they were. These cares, however, are no longer mine. I resign myself cheerfully to the managers of the ship, and the more contentedly as I am near the end of my voyage. I have learnt to be less confident in the conclusions of human reason, and give more credit to the honesty of contrary opinions. The radical idea of the character of the constitution of our government which I have adopted as a key in cases of doubtful construction is, that the whole field of government is di-

vided into two departments, Domestic and Foreign, (the States in their mutual relations being of the latter); that the former department is reserved exclusively to the respective States within their own limits, and the latter assigned to a separate set of functionaries, constituting what may be called the Foreign branch, which, instead of a federal basis, is established as a distinct government *quoad hoc*, acting, as the domestic branch does, on the citizens directly and coercively; that these departments have distinct directories, coördinate and equally independent and supreme, each within its own sphere of action. Whenever a doubt arises to which of these branches a power belongs, I try it by this test. I recollect no cases where a question simply between citizens of the same State has been transferred to the Foreign department, except that of inhibiting tenders but of metallic money and *ex post facto* legislation. The causes of these singularities are well remembered.

"I thank you for the copy of your speech on the question of national improvement, which I have read with great pleasure, and recognize in it those powers of reasoning and persuasion of which I had formerly seen from you so many proofs. Yet, in candor, I must say it has not removed, in my mind, all the difficulties of the question. And I should really be alarmed at a difference of opinion with you, and suspicious of my own, were it not that I have, as companions in sentiment, the Madisons, the Monroes, the Randolphs, the Macons, all good men and true, of primitive principles. In one sentiment of the speech I particularly concur: 'If we have a doubt relative to any power, we ought not to exercise it.' When we consider the extensive and deep-seated opposition to this assumption; the conviction entertained by so many that this deduction of powers by elaborate construction

prostrates the rights reserved to the States; the difficulties with which it will rub along in the course of its exercise; that changes of majorities will be changing the system backwards and forwards, so that no undertaking under it will be safe; that there is not a State in the Union which would not give the power willingly by way of amendment, with some little guard, perhaps, against abuse,—I cannot but think it would be the wisest course to ask an express grant of the power. A government held together by the bands of reason only, requires much compromise of opinion, that things, even salutary, should not be crammed down the throats of dissenting brethren, especially when they may be put into a form to be willingly swallowed, and that a great deal of indulgence is necessary to strengthen habits of harmony and fraternity. In such a case, it seems to me it would be safer and wiser to ask an express grant of the power. This would render its exercise smooth and acceptable to all, and insure to it all the facilities which the States could contribute, to prevent that kind of abuse which all will fear, because all know it is so much practised in public bodies, I mean the bartering of votes. It would reconcile every one, if limited by the proviso that the federal proportion of each State should be expended within the State. With this single security against partiality and corrupt bargaining, I suppose there is not a State, perhaps not a man in the Union, who would not consent to add this to the powers of the General Government. But age has weaned me from questions of this kind. My delight is now in the passive occupation of reading; and it is with great reluctance I permit my mind ever to encounter subjects of difficult investigation. You have many years yet to come of vigorous activity, and I confidently trust they will be employed in cherishing every measure which may

foster our brotherly union, and perpetuate a constitution of government destined to be the primitive and precious model of what is to change the condition of man over the globe. With this confidence equally strong in your powers and purposes, I pray you to accept the assurance of my cordial esteem and respect.

"THO. JEFFERSON."

The speech referred to in the above letter elicited from others a warmer degree of commendation than the venerable ex-President had to bestow upon it. Du Ponceau, the publicist, between whom and Livingston there was a close and life-long intimacy, wrote to him from Philadelphia: "I have this moment read in the 'National Intelligencer' your admirable speech on roads and canals. I have never seen such eloquence in a Congressional speech since I was born. I am delighted with it. I cannot tell you with what enthusiasm I dwell on every word that it contains. Could you not lend me your eloquence but for one week? I am now engaged in writing a dissertation on the nature and extent of the jurisdiction of the courts of the United States. But how can I write after you? I wish I had you here to consult on my foolish performance. But that cannot be. I must invoke your spirit, and try to catch a corner of your mantle."*

Du Ponceau was a friend whose head as well as whose heart Livingston always highly valued and greatly depended upon. He had been one of his counsel in the Batture affair, had superintended the publication of his

* This speech, which the learned Du Ponceau thought a model of eloquence, was a very elaborate discourse, couched in Mr. Livingston's best style, maintaining earnestly the affirmative of the question, "Has the government of the United States a constitutional right to make such roads and canals as are necessary and proper for the transportation of the mail, for the giving facility to military operations, and to the commercial intercourse between the States?"

final pamphlet on that subject, had had the paper submitted to his literary judgment as well as professional approval, and had been freely relied upon for advice in various questions, including some of the most profound and difficult which Livingston encountered in the preparation of his system of penal law. In May, 1821, the latter had written to his friend thus: —

"Our correspondence is something like that of the hero of a fairy tale and the Genius that protects him: the talisman is never resorted to but when there is great need of assistance. Friendship has been the magic word between us hitherto, and, though I have never used it in vain, I have now another that will not fail to command the full exercise of your powers: it is public good. Both are combined in the request I make, that you will read the enclosed and let me have your advice and assistance in executing the task which is there detailed.

"I fear I have greatly overrated my powers in the undertaking; but the die is now thrown, and I must execute it as well as I can. My present impression is strongly against the retention of the punishment of death. I think it a most inefficient punishment in any case; it certainly has been found so in most. Is there good reason for retaining it in any? Yet in all the States it is retained for murder. Is not this owing to a secret attachment to the fanciful *lex talionis*, or, what is worse, to a vindictive spirit which the law should never indulge. Let me have your sentiments fully on this point, and on the utility, or rather the practicability, of reducing into a code all that ought to be enacted under the head of criminal law.

"I shall, from time to time, rub the talisman, and call on my Genius for his aid in extricating me from the difficulties in which my imprudent undertaking has in-

volved me. Remember that, in all the records of fairy-land, there is no instance of a refusal to obey the word of power."

The following extract from a letter to Du Ponceau is a specific instance of Livingston's method in searching for light while endeavoring to frame a complete system of criminal law. The result of the particular discussion here elicited shows that he did not adopt the opinions of others without being well convinced of their soundness, and that his own judgment, aided by all the light he could get from other minds, was always his ultimate dependence in the conclusions he promulgated. The answer of Du Ponceau admitted the force of the suggestion as to the difficulty of framing wise laws for the punishment of acts *contra bonos mores*, but advised that the subject could not be safely passed wholly by, and that the French code furnished, in substance, the best provisions to be made on the subject. Nevertheless, after full reflection, Livingston adhered to his original impressions, — omitting from his system altogether the whole class of offences against decency, — and enforced his views on this point in his address to the legislature with perfect conviction and confidence.

"I am in a difficulty, and, as it is one arising out of a question of jurisprudence, I know no one to whom I can apply for assistance with so sure a hope of relief as to you.

"In the revision of my criminal code, I have now under consideration the chapter of offences against public morals. This is intended to comprehend all that class which the English jurists have vaguely designated as offences *contra bonos mores*, finding it much easier in this, as they do in many other cases, to give a Latin phrase that may mean anything, rather than a definition.

"I have serious thoughts of omitting it altogether, and leaving the whole class of indecencies to the correction of public opinion. I have been led to this inclination of mind (for as yet I have formed no decision) from an examination of the particular acts which in practice have been brought under the purview of this branch of criminal jurisprudence. In the absence of anything like principle or definition, I was obliged to have recourse not only to precedent, but to the books of precedents; and they strongly reminded me of some forms which I have seen in Catholic church books, of questions which are to be put by the confessor to his penitent, in which every abomination that could enter into the imagination of a monk is detailed in order to keep the mind of a girl of fifteen free from pollution. Turn to any indictment of this kind in the books, for the publication of obscene prints or books, or for indecency of behavior, and you will find the innuendoes and the exposition of the offence infinitely more indecorous, more open violations of decency, than any of the works they are intended to punish and repress. The evidence must be of the same nature, and hundreds will hear the trial who would never have seen the book or the print. This evil is inevitable, if such acts are punished by law.

"There is another, of no less magnitude, arising from the difficulty of defining the offence. Use the general expression of the English law, and a fanatic judge, with a like-minded jury, will bring every harmless levity under the lash of the law. Sculpture and painting will be banished for their nudities; poetry, for the warmth of its descriptions; and music, if it excites any forbidden passion, will scarcely escape.

"On the whole, I am surrounded by difficulties. Help me to a definition that shall include what ought to be

punished, and not give room for the abuse I have pointed out. Let me know how I shall decently accuse and try a man for indecency; or else fortify me in my opinion of letting public opinion protect public morals."

The calamity by which the manuscript of the Code, the product of years of intense labor, was annihilated during the night after its completion, has been already mentioned. This happened in New York, at the house No. 66 Broadway, where Livingston lodged with his family and worked during the recess of Congress. When he left Louisiana for Washington the task was nearly done, and required for its completion but a few months' application. The first, or long session of Congress continued till the end of May, 1824, and then Livingston devoted himself wholly to the work. On the 14th of November, of the same year, it was finished, and, as I have said, destroyed. He announced the misfortune to Du Ponceau —from whom he had lately borrowed a volume of Bacon's Works—in the following terms: —

"The night before last, I wrote you an apologetic letter, accounting for not having before that time thanked you for your letter and your book. My excuse lay before me, in four Codes: of Crimes and Punishments, of Criminal Procedure, of Prison Discipline, and of Evidence. This was about one o'clock; I retired to rest, and in about three hours was waked by the cry of fire. It had broken out in my writing-room, and, before it was discovered, not a vestige of my work remained, except about fifty or sixty pages which were at the printer's, and a few very imperfect notes in another place. You may imagine, for you are an author, my dismay on perceiving the evidence of this calamity; for circumstanced as I am, it is a real one. My habits for some years past, however, have fortunately inured me to labor, and

my whole life has to disappointment and distress. I therefore bear it with more fortitude than I otherwise should, and, instead of repining, work all night and correct the proof all day, to repair the loss and get the work ready by the time I had promised it to the legislature. In a preliminary discourse, which I intended as a kind of commentary on the text of the law, I had made several references to Bentham. Having the volumes before me, I made no extracts; and, the books being also burned, I am much at a loss, as I cannot find them in any library or book-store in this city. Will you do me the favor to buy, borrow, or beg them for me? The works I allude to are the French editions, published by Dumont: 'Principles of Legislation,' 3 vols.; 'Theory of Punishments,' 2 vols.; and 'Treatise of Judicial Proof.' Mr. Malenfant will be good enough, if you can procure them, to have them boxed and sent by the Union Transportation Line, which will convey them safe; and if you can only borrow them, I will carefully bring them on with me when I come. Your little book escaped the flames, and I have saved your Bacon, though not my own. I make no apology for giving you this trouble, because I know you will not think it one."

This fearful disaster did not ruffle the outward serenity of Livingston's demeanor in the least. But he had much to do to soothe his wife and daughter, who, having watched the progress of the work with a lively interest, were thrown by its sudden destruction into the keenest distress.

Six days after the accident, he wrote again to Du Ponceau: —

"I thank you most sincerely for your kind participation in my calamity, for although I put the best face upon it, I cannot help feeling it as such. I have always found

occupation the best remedy for distress of every kind. The great difficulty I have found on those occasions was to rally the energies of the mind, so as to bring them to undertake it. Here, exertion was necessary not only to enable me to bear the misfortune, but to repair it; and I therefore did not lose an hour. The very night after the accident I sat up until three o'clock, with a determination to keep pace with my printer; hitherto I have succeeded, and he has, with what is already printed, copy for an hundred pages of the penal code. I find my recollection strengthens by keeping the attention fixed on one subject, and that by the help of my loose notes, which serve as *jalons*, (have we any English word for this?) I find my old route easier than I expected. Next week, about Saturday, I will send you the penal code; but you cannot judge fairly of it without the other codes, each of which elucidates and supplies deficiencies in the others. The part I shall find most difficult to replace is the preliminary discourse, of which I have not a single note, and with which (I may confide it to your friendly ear) I was satisfied. A composition of that kind depends so much upon the feeling of the moment in which it is written, the disposition that suggests not only the idea but the precise word that is proper to express it is so evanescent, (mine at least are,) that it will, I fear, be utterly impossible for me to regain it. I thank you again for the pains you have taken to procure the books. The one you have been so fortunate as to get will be of great service to me. It is not the last edition, but I believe there is no material difference. The price is no consideration with me. I have seen the notice in the 'National Gazette.' It is, excepting the value it places on the work, precisely what it ought to be. I yesterday had a long conversation with Chancellor Kent; he is in raptures with your book.

I have laid it by, that I may enjoy it unmixed with the alloy of my own productions, which at present engross my attention; and, to confess the truth, I read just enough to convince me that I had engaged in a very presumptuous undertaking, and was afraid to read more, lest I should be forced to confess that it was an impracticable one. I am not quite convinced of the truth of the proverb that tells of the glory of failing in a great attempt. The mortification is in proportion to the greatness of the object we have endeavored to attain; and if glory depends upon the opinion of others, that very seldom comes in to comfort the unfortunate man who has presumptuously miscalculated his forces."

Those who have read the preliminary discourse above mentioned will be surprised to learn that it was the reproduction of a performance with which its author had felt satisfied, and of which not a single note remained; and will wonder at the manner of its accomplishment, if not at the fact, that, under such disheartening circumstances, it was undertaken at all.

In the preparation of his penal code, Livingston industriously sought aid from the opinions of all those whose judgment he respected. To a request which he made for the views of Jefferson, the latter, nearly at the close of his long and preëminently useful life, wrote the following response: —

"*Monticello*, March 25, 1825.

"DEAR SIR: I know how apt we are to consider those we knew long ago, and have not since seen, to be exactly still what they were when we knew them, and to have been stationary in body and mind, as they have been in our recollections. Have you not been under that illusion with respect to myself? When I had the pleasure of being a fellow-laborer with you in the public ser-

vice, age had ripened, but not yet impaired, whatever of mind I had at any time possessed; but five-and-twenty chilling winters have since rolled over my head, and whitened every hair of it. Worn down by time in bodily strength, unable to walk even into my garden without too much fatigue, I cannot doubt that the mind has also suffered its portion of decay. If reason and experience had not taught me this law of nature, my own consciousness is a sufficient monitor, and warns me to keep in mind the golden precept of Horace, —

'Solve senescentem maturè sanies equum, ne
Peccet ad extremum ridendus.'

I am not equal, dear Sir, to the task you have proposed to me. To examine a code of laws, newly reduced to system and text, to weigh their bearings on each other in all their parts, their harmony with reason and nature, and their adaptation to the habits and sentiments of those for whom they are prepared, and whom, in this case, I do not know, is a task far above what I am now, or perhaps ever was. I have attended to so much of your work as has been heretofore laid before the public, and have looked, with some attention, also, into what you have now sent me. It will certainly arrange your name with the sages of antiquity. Time and changes in the condition and constitution of society may require occasional and corresponding modifications. One single object, if your provision attains it, will entitle you to the endless gratitude of society, — that of restraining judges from usurping legislation; and with no body of men is this restraint more wanting than with the judges of what is commonly called our General Government, but what I call our Foreign department. They are practising on the Constitution by inferences, analogies, and sophisms, as they would on an ordinary law; they do not seem

aware that it is not even a *Constitution* formed by a single authority, and subject to a single superintendence and control, but that it is a compact of many independent powers, every single one of which claims an equal right to understand it, and to require its observance. However strong the cord of compact may be, there is a point of tension at which it will break. A few such doctrinal decisions, as barefaced as that of the Cohens, happening to bear immediately on two or three of the large States, may induce them to join in arresting the march of government, and in arousing the co-States to pay some attention to what is passing, to bring back the compact to its original principles, or to modify it legitimately by the express consent of the parties themselves, and not by the usurpation of their created agents. They imagine they can lead us into a consolidated government, while their road leads directly to its dissolution. This member of the government was at first considered as the most harmless and helpless of all its organs; but it has proved that the power of declaring what the law is, *ad libitum*, by sapping and mining, slily and without alarm, the foundations of the Constitution, can do what open force would not dare to attempt. I have not observed whether, in your code, you have provided against caucusing judicial decisions, and for requiring judges to give their opinions *seriatim*, every man for himself, with his reasons and authorities at large, to be entered of record in his own words. A regard for reputation and the judgment of the world may sometimes be felt where conscience is dormant, or indolence inexcitable. Experience has proved that impeachment in our forms is completely inefficient.

"I am pleased with the style and diction of your laws; plain and intelligible as the ordinary writings of common

sense, I hope it will produce imitation. Of all countries on earth of which I have any knowledge, the style of the acts of the British Parliament is the most barbarous, uncouth, and unintelligible; it can be understood by those alone who are in the daily habit of studying such tautologous, involved, and parenthetical jargon. Where they found their model I know not; neither ancient nor modern codes, nor even their own early statutes, furnish any such example; and, like faithful apes, we copy it faithfully.

"In declining the undertaking you so flatteringly propose to me, I trust you will see but an approvable caution for the age of fourscore and two, to avoid exposing itself before the public. The misfortune of a weakened mind is an insensibility of its weakness. Seven years ago, indeed, I embarked in an enterprise, the establishment of an University, which placed me, and keeps me still, under the public eye; the call was imperious, the necessity most urgent, and the hazard of titubation less by those seven years, than it now is. The institution has at length happily advanced to completion, and has started under auspices as favorable as I could expect. I hope it will prove a blessing to my own State, and not unuseful perhaps to some others. At all hazards, and secured by the aid of my able coadjutors, I shall continue, while I am in being, to contribute to it whatever my weakened and weakening powers can; but assuredly it is the last object for which I shall obtrude myself on the public observation.

"Wishing anxiously that your great work may obtain compleat success, and become an example for the imitation and improvement of other States, I pray you to be assured of my unabated friendship and respect.

"TH. JEFFERSON."

While Livingston was engaged in restoring the Code, he suffered no diversions, either of pleasure, politics, or repose, to interrupt his work. When passing some weeks of a congressional vacation at the home of his sister, Montgomery Place, he said, in a letter to Du Ponceau: "Your city is becoming more quiet, I hope, after your contested election. The sound of these commotions reaches me in my quiet retreat, but it does not disturb either my repose or my attention to subjects I believe more important, but certainly better suited to my inclination, and perhaps to my talent, if I have any." On being urged by Mr. Webster to pay the latter a visit, his answer elicited from the great expounder of the Constitution the following sample of ponderous gayety: —

"*Boston*, Sept. 21, 1825.

"My Dear Sir:

. . . . . .

"You cheer us with the possibility of a visit, but again you damp us by calling it a faint hope. I can only admonish you, that, if you suffer these learned labors to induce you to deprive us of the pleasure of seeing you, as they have hitherto done, I shall be likely to be an enemy to codes all my life. As to Mrs. Webster, I believe she has decisively made up her mind on the subject. We are determined, however, to look out for you until we hear that you are gone South, or until we ourselves move off in that direction.

. . . . . .

"I am, dear Sir, very truly yours,

"Danl. Webster."

While Livingston continued a member of the House of Representatives, but few occasions arose for bringing him

out upon topics of general and permanent interest. The following passage—forming a small part of his speech delivered in January, 1826, upon a bill to amend the judicial system of the United States by creating new circuits, to embrace the States then lately admitted into the Union —exhibits well his manner in addressing the House at this period. Having referred to the history of the several States which, after admission, had been for any time left without circuit courts, in order to explain the circumstances and reasons of the omission, he proceeds: —

"The first moments of a State are generally devoted to the interesting task of internal organization. The energies and talents of the new State are directed to matters of immediate interest, and it is, therefore, not astonishing that this anomaly should not earlier have attracted attention. Nor can the neglect be considered as a reproach, far less urged as an abandonment of the right. The time, however, has at length arrived, when the six States in which district courts only are now established demand that they should be placed on an equality with the other members of the Union, and the three other Western States desire such a modification of the system as will enable the judges of the circuit court to despatch the accumulation of business which obstructs the administration of justice. Why do the six States require this? Why do we desire to be placed on a footing with the other States? We desire it, Sir, because we are States! entitled to equality! the most perfect equality with the oldest, the most populous, the most influential, the best represented State among the first thirteen of the Union! Rights, privileges, honors, burdens, duties, everything, by the structure of our government, must be participated by every member of it, on the broadest principle of equality. I would not, coming as I do from one of the smallest States in point of population,

—I could not, without betraying its honor and dignity,—receive in its behalf even an exemption from any duty, however burdensome, if borne by the other States, if it were conceded as a badge of inferiority; I should be disavowed by those who sent me, and justly disavowed. They ask no exemptions; but they demand! yes, Sir, that is the word,—they demand an equality of rights. Inattentive to this right when it was not disputed, they are feelingly alive to it when their claim is contested; and in their behalf I say, with Hotspur, for a disputed right,—

'Mark ye me,
I'll cavil on the ninth part of a hair.'

"But, again, why do we desire the establishment of a circuit instead of a district court? What advantage is to be derived from it? I answer, the first effect will be uniformity. But what are the advantages, says the gentleman from Virginia, of uniformity? We desire it simply because it is uniformity. If the circuit system be an advantage to the States in which it is established, it ought to be extended to us; for we are entitled to every political advantage, resulting from the Union, which they enjoy. If it be, on the contrary, a burden, it is one of which we ought to support our share. If the system be good, extend it; if it be bad, abolish it, and give us one that shall be equal in its operation. We cannot extricate ourselves from this dilemma, while we acknowledge what nobody has yet ventured to deny, in words,—the perfect equality in political rights in the several States. Uniformity, says the same honorable member, can only, on this subject, be desired as a matter of State pride and State feeling. Yes, Sir, it is a question of pride and feeling,—of honest pride and dignified feeling,—a pride that ennobles, a feeling that will not permit us to suffer wrong, and which, when we disregard, we lose the best characteristics of freemen.

If this bill had no one object of profit, convenience, or utility, in the ordinary acceptation of those terms; if its only end were to place us on an equality with the other States, in a circumstance the most insignificant,—if the right to it were denied, I should contend for that right with the same pertinacity. Sir, the privilege of being covered during the debates of this House is one which of all others I hold to be the most worthless; it is one of which I do not frequently avail myself, and which, if it were not sanctioned by such high authority, I should think somewhat indecorous; yet, Sir, make a discrimination in this paltry privilege,—declare that none but the representatives from the Atlantic States shall be covered, but that those from beyond the mountains shall enter bare-headed,—do this, I will not ask how long we shall stay here, how many hats will be seen in this hall, but how many heads will be found to wear them. No, Sir, pride, founded on a sense of dignity, feeling, originating in a sense of wrong, ought to be cherished in governments, as in individuals; lose them, and patriotism is at an end, and the motive to glorious actions is destroyed; for the pure virtue that does not need their aid has either never appeared upon earth, or is lost in the degeneracy of modern times. Direct them to proper objects, but do not reduce, or endeavor to annihilate them.

"But is this a mere matter of pride? Important as its gratification is when properly directed, is that the object? There are real disadvantages attending the present state of things, independent of the injury to pride of opinion or to wounded feelings of dignity. There is risk of fortune, of life, of reputation, to the inhabitants of six of the Western States, which is not incurred by those of the others. We have seen to what objects the powers of the Federal judiciary extend: that all suits in which an alien

or a citizen of another State is plaintiff come within its scope; and that accusations for crimes against the United States are to be decided there. Under these two heads every judicial question that can affect property, life, liberty, or reputation may be comprehended.

"Now, I ask gentlemen who oppose this bill to give a deliberate answer — if they deign to give any, I am sure it will be a candid one — to this question: whether a defendant who has these all-important concerns depending upon the decision of a single district judge, not always a man of high legal talents, (for your paltry salaries will not command them,) without the fear of any revision of his sentence, and remote from any superintending control, — whether a defendant so circumstanced can be said to enjoy equal rights with him who cannot suffer either punishment or loss of property unless the decision of his district judge is concurred in by a man selected from the highest talents and distinguished for his integrity and learning, and who, in every case of a doubtful nature, even when they concur, may, by a *pro forma* dissent, have the benefit of a recurrence to the assembled wisdom and justice of the Supreme Court. Are these two parties on the same footing? Can it be said, with the semblance of reason, that they enjoy the same rights? And can it be said that a State, all of whose citizens are subject to these disadvantages, is placed on an equal footing with other States, whose inhabitants enjoy the privileges I have enumerated? If it cannot, the question is at an end; for the terms of our admission are express. Each of the new States is declared 'to be one of the United States, and admitted into the Union on an equal footing with the original States, in all respects whatever.' Now, Sir, how is this stipulation fulfilled, if the property, lives, and liberty of *our* citizens are subject to the will of a single man,

while yours can suffer in neither without the revision of a wise and enlightened tribunal? But we have an appeal from the decision of the district judge; therefore we have no right to complain! Error, Sir! palpable error in fact, as well as fallacy in argument! This right of appeal is limited, in cases of property, to those above two thousand dollars in value. But in many instances the whole fortune of an individual does not exceed that sum. In criminal cases, there is no appeal. It is not only property that is concerned, but liberty and life. Both may depend on the construction of law. No innocence can protect a man from accusation. All are liable to be dragged before a court. My life may depend on a correct or false interpretation of a statute of the United States. It is submitted to a district judge. He decides incorrectly against me, and my life is lost. There is no appeal from his decision, though he may be the man the least qualified, in the district, to pronounce. What would happen, if the case were tried in a circuit, not in a district court? First, the concurrence of a judge of the Supreme Court in the opinion of the district judge would be necessary. Secondly, if they did concur, if the case were one of first impression, a *pro forma* dissent would be entered, and final judgment could not be passed until the question had been solemnly debated, and the sentence had received the sanction of the Supreme Court. Now, I again ask gentlemen to say whether this is no disadvantage. Let them meet this question fairly, and either give a satisfactory answer, or agree to remove the evil by according to us a uniform administration of justice."

In May of the same year, a debate upon the bill for the relief of James Monroe, providing for payment to the ex-President of various sums for services while in the employment of the government, and including an

allowance for salary and expenses for a certain period of his absence on the mission to negotiate the purchase of Louisiana, — there being opposition to the bill, and the friends of Mr. Monroe showing in the discussion a perhaps over-zealous wish to make the most of the part he had acted in the negotiation, — afforded Mr. Livingston an opportunity for making the following dignified and conclusive assertion of the controlling influence and merit of his departed brother in that most important transaction: —

"Sir: while I feel grateful for the handsome, and, I hope I may be permitted to say, the merited eulogium which the gentleman from Virginia has paid to the character of my deceased brother, I must not omit to rectify one error into which the gentleman has inadvertently fallen in stating the great services which the late President had rendered to his country, — services which no one appreciates at a higher rate than I do, and in the performance of which, part of the debt which we are now about to pay was incurred. In enumerating these services, the gentleman adverted to his special mission for making the Louisiana treaty, and stated that until his arrival the resident minister, with all his exertions, had been able to effect nothing; that the debts due to our citizens remained unpaid; and he gives us to understand that the acquisition of Louisiana must be attributed to the exertions and diplomatic skill of Mr. Monroe. Now, Sir, with the most sincere desire to do justice to the important services that gentleman has rendered to his country, and with the greatest reluctance to say anything that might seem to operate against the bill for his relief, which I shall support by my vote, and would by my arguments, if I could suggest any more convincing than those which have been so ably and eloquently urged by the gentle-

man from Virginia, I yet have a duty to perform, which obliges me to give to the House some account of the state of the negotiation with France at the time of Mr. Monroe's arrival. It may, besides the principal object I have in view, be interesting as an historical fact.

"The statement made by the gentleman from Virginia of the hopeless state of the negotiation is perfectly correct, if applied to a time somewhat anterior to Mr. Monroe's arrival. An indifference to our complaints, evasions of the clearest claims upon their justice, inattention to the most urgent representations, for a long time characterized the conduct of the French cabinet. Disgusted with all these diplomatic manœuvres of the ministers, Mr. Livingston resolved on a bold and unusual measure, the expression of a sincere admiration for the extraordinary man who was then at the head of the government of France, a prudent resolve to have no political connection with, and to give no countenance to any party there, more particularly to that which, calling itself republican, naturally looked for aid from the minister of a republic. An established reputation for honor and integrity, and celebrity as a man of literature and science, had given him a personal influence with the First Consul, of which he was determined to try the extent. He had studied his character, and thought that if he could enlist the military pride and love of fame which entered so largely into the formation of that character on the side of justice, much might be done. Leaving, therefore, the beaten route of official notes to ministers, he addressed the principal himself. He made a short and plain, but forcible statement of the claims of our citizens; he showed the injustice that had been done to them; he adroitly availed himself of the national interest that had been excited in favor of France; showed the value of the supplies (on

which some of our claims were founded) to her colonies; contrasted the confidence and good faith of our citizens with the rapacity and infidelity to engagements with which they had been treated, and the anticipated payment of our engagement to France with her delays and refusal to do us justice; hinted at the advantage which England might make of the unfriendly disposition which such conduct was calculated to excite; and concluded with a short appeal to the feelings of the First Consul, on those points on which he knew he could most sensibly be touched, — his personal reputation, the dishonor of breaking engagements he himself had made, the reputation to be acquired by a strict performance of contracts, and the necessity of preserving the word of a soldier and a man of honor. After urging these considerations in the strongest manner, it was suggested, that, if the embarrassments of the treasury, naturally resulting from a long and expensive war, just then closed, and the prospect of its renewal, should render the payment or the funding of the debt inconvenient, means might be found (evidently pointing to a purchase of Louisiana) which would not only satisfy our claims, but relieve some of the exigencies of the State. To this was added the risk of losing the colony, if war, then daily expected, should again break out. These and other considerations were strongly urged in the letter. This address, though not in the usual course of diplomacy, was well received, and seems to have had the effect that was expected; for a communication was immediately made to the minister, in which none of the usual evasions or subterfuges were resorted to; it contained an explicit promise that the American claims should be honorably adjusted and speedily paid. To prevent speculation, as well as to create an additional tie on the French government, Mr. Livingston immediately gave notice to the

agent of the claimants in France that he had received a promise on which he relied for their payment, and at the same time wrote to the United States, giving a similar notice, desiring it to be made public, and advising the creditors not to part with their debts. This was in the latter part of February, or the beginning of March. Mr. Monroe did not arrive in Paris until the 12th of April following. After this promise of payment, Mr. Livingston did not cease to urge its fulfilment; and, besides the usual and obvious arguments contained in his former notes, he stated that he had the personal engagement of the First Consul, on which he had so much relied that he had committed himself to his countrymen for its punctual performance; that the season for evasions and delays was past; and that he had the fullest confidence in the honor and faith that had been pledged for doing justice to his countrymen. Thus urged for the performance of a promise which he himself considered as an honorable one, but without the means of performing it in one way, the First Consul resolved to comply with it in the other, that had been suggested by the minister; and there is the strongest reason to believe that a resolution to sell was taken in council some days before Mr. Monroe arrived in France; but what is certain is, that the day before his arrival in Paris the cession of Louisiana was proposed to Mr. Livingston by Talleyrand. Mr. Livingston had then heard, either that Mr. Monroe had arrived at Havre, or was hourly expected, with powers on that subject, and of course declined any specific answer until he should arrive. Talleyrand then pretended that he spoke without authority. But within two days after, so urgent was the French cabinet to conclude the sale, that one of the French Ministry, an old and intimate friend of Mr. Livingston, called on him, the day of or

the day after Mr. Monroe's arrival, but before he had presented his credentials, before he had taken or could take a single step in the negotiation, and explicitly offered, by authority of the First Consul, to cede the province, for a sum very little beyond that which was afterwards agreed to be given by Mr. Monroe and Mr. Livingston. The way was paved for this important acquisition by official notes, indirect communications, and printed essays, showing the little value of Louisiana to France, the question that would arise with the United States relative to the navigation of the Mississippi, and the right of deposit secured to us by Spain, and the certainty of its conquest if the war should be renewed with Great Britain. So that when Mr. Monroe's health permitted him, after his arrival, to take part in the negotiation, everything was done but fixing the price. In this, he coöperated with Mr. Livingston, and they produced a diminution from $12,000,000, exclusive of our own claims, to $1,000,000, also exclusive of those claims.* The results of that treaty have been most beneficial to the United States. The measures and arguments which led to it have frequently

* This statement, including the figures in the text, is according to the report of Mr. Livingston's remarks, in the annals of Congress. There is a considerable error, either in the report or in Mr. Livingston's information on the point here referred to. That the report is at fault in part I think is clear from the fact that these figures contradict what the speaker had said a few sentences before. The following is, in substance, the whole history of the negotiation, as to the price of Louisiana. Napoleon authorized his minister, Barbé-Marbois, to agree to cede the territory to the United States for the price of 50,000,000 francs, that sum, and no other, being his own suggestion. Barbé-Marbois took it upon himself, nevertheless, to demand the sum of 80,000,000 francs. To this demand the American Ministers, Messrs. Livingston and Monroe, soon acceded, only asking a stipulation, to which France agreed, that, out of the 80,000,000, the United States should reserve 20,000,000, to be applied to the satisfaction of claims of their own citizens against France under the Convention of 1800. It was declared by the treaty that five and one third francs should equal the dollar of the United States. So that the sum paid directly to France on the purchase was $11,250,000, and the sum reserved to satisfy the claims of citizens of the United States was $3,750,000, making the whole price $15,000,000.

been detailed to me by my deceased relation. He foresaw the advantage that must result to this country from the acquisition, and he felt an honest pride in having been instrumental in obtaining it."

No young politician could have been more attentive to the ordinary and special interests of his constituents than was Livingston at this period. He had been a member of the House but four days when he introduced a measure, which he afterwards pushed till it was carried into effect, for the erection of light-houses, beacons, buoys, and floating lights, along the track of navigation between New York and New Orleans; and his active exertions secured the erection of new and splendid Federal buildings at the latter place. He consulted not less the wants and habits of the people of Louisiana in his efforts, which were successful, to effect, in the changes of the tariff, the imposition of additional duties upon the importation of molasses, and a reduction of the duties upon red wines.

At the same time, his letters and political writings show that he felt the most lively interest in national works and projects, as internal improvements, the great national road, and the scheme of uniting the two oceans by a ship-canal, cutting the Isthmus of Panama. But that which employed his labors and thoughts more than all these subjects was the perfecting and restoring of his system of penal law, which, after its completion for Louisiana, he hoped to introduce into Congress, with such changes as would adapt it to the use of the United States. For this reason, principally, he wished to continue a Representative. In order to do so, it was necessary for him — so unskilfully had he managed his pecuniary affairs — to undertake some practice in the Supreme Court, in order to eke out, with his pay as a member,

an income sufficient for his expenses. To such professional labor he devoted himself with characteristic cheerfulness and zeal.

In the year 1826 * he paid his long-standing debt to the government, with its accumulations of interest, amounting then to a sum greater than the principal. This was done by the sale of property to the government. As so poor a financier was not likely to live long enough to have so large an amount of money by him at one time, it was well that this method of closing the business was thought of. Having disentangled from the Batture litigation some lots in the city of New Orleans, to which his title became clear and no longer disputed, he offered them to the Treasury department for a sum covering the precise amount due upon the judgment against him, with interest. This sum was $100,014.89. The administration, of which he was politically an opponent, after consideration, accepted the proposal, took the property, and discharged the debt.† The government made by the purchase a good bargain; for it not long afterwards sold the lots for $106,208.08, and so realized a profit from the transaction. The debtor felt his relief profoundly, but not, I suppose, with so keen a sense as he would have experienced if he could have attained it twenty years sooner.

The manners and social habits of Livingston were unchanged. He preserved the vigor of his health by daily long walks, and his relish for society by free intercourse with his friends and their families. His powerful constitution enabled him to enjoy heartily a social, and even a convivial dinner, and immediately to retire, as if refreshed

* The above is the time of the actual satisfaction of the debt. The formal discharge did not come out of the "Circumlocution Office" till the 20th of August, 1829.

† This arrangement was carried out through the machinery of a sale by the Marshal on an execution, the United States, by an agent, becoming the purchaser.

and strengthened, to spend the best part of the night in the deepest studies. These lucubrations, so long continued, did gradually lead him into occasional habits of abstraction among his family and most intimate acquaintances. When caught in these absences of mind by the exposure of some irrelevant answer on his part, he would laugh heartily and loud. In the genial simplicity of his demeanor he seemed unconscious of his increasing age, or of his growing reputation. He discussed with animation the most ordinary topics. He was always fond of lively conversation, pun, and repartee; but spirit rather than wit was the characteristic of his own share in such conversation. Of acrimony, or that pungency which is akin to it, he was incapable. While he continued a representative, Josiah S. Johnston, a native of Kentucky, and a distinguished and able man, was one of the senators in Congress from Louisiana. Livingston and he belonged to opposite parties, but personally were on terms of great intimacy and perfect good-feeling. While the former was member of the House, one of the terms of the senator was about to expire, and he was the candidate of his party in the legislature for reëlection. The opposition, in Livingston's absence, voted for, and nearly succeeded in electing him senator in place of his friend. One evening, while the result of the election was looked for at Washingston, Mr. Livingston, at a ball, approached Mrs. Johnston, who was standing in a set ready to dance, and, bowing very low, said, "Madam, I congratulate you. Your husband is chosen senator for six years more." The lady thanked him for his news and his gratulations. He lifted his finger as he turned to leave her, saying, with a droll mixture of mock chagrin and unmistakable good-nature, "But mind you, Madam, it was only by a very few votes, very few indeed."

At the same time that Livingston first took his seat in the House as representative from Louisiana, General Jackson repaired to Washington as a newly chosen senator from Tennessee; and he resided there until his resignation of the office two years later. We have seen how the acquaintance between Jackson and Livingston had begun, in Congress in 1796, with common political views and mutual respect; how, after the lapse of many years, their destinies had brought them into close relations with each other in the memorable defence of New Orleans; and how they had worked together and leaned upon each other throughout that critical and glorious campaign. The impressions which they had then left upon each other were ineffaceable. Livingston had clearly discerned in the General those distinctive qualities which at length became so familiar to all the world; and he had marked him President of the United States, while Jackson himself had not dreamed of his own fitness for such an office till years afterwards. He was then as proud of the General's friendship and confidence as at any later period, even in the zenith of the latter's popularity and world-wide fame. After parting, in 1815, they had written to each other often, and on every occasion of any importance in the affairs of either. So complete was their intimacy that they had taken mutual pleasure in executing for each other the most ordinary commissions. In 1819, Livingston, wishing to assist a friend in procuring a pair of matched horses, had consulted General Jackson on the subject, who was delighted to get, for a price within the limit allowed, "the only pair of good matched horses within his knowledge," which, after purchasing, he would not send till "a fair experiment could be made with them in harness." In answer to an apology by Livingston for troubling him with such a request, he had replied, "I

regret that you should hesitate to command me in any service that I could render to you or to your friends. I never shall forget the aid you rendered me in the trying scenes before New Orleans." The substance of this expression he had often, and on almost every occasion, repeated. In the same letter from which it is quoted he had added, "I thank you for your expressions of congratulation on the triumph over my enemies in their late wicked attack on me. These were the real enemies of our country; they cared not how deep or how unmerited the wound they gave me, provided they could reach and prostrate the administration, and exalt themselves upon its ruin; but * * * * * * * *, * * * *, & Co. have prostrated themselves; they are politically fallen, never to rise again. This is justice; for when men abandon principle, and adopt the plan of elevating themselves upon the downfall of others, regardless of the means they employ to obtain their object, they ought and ever will tumble, and their base acts recoil upon themselves. I intend tendering to the Senate an answer to the report of their committee, with the necessary documents, which, I trust, will show their wickedness to the world. I wish that you had the documents, or that I could wield your pen." In December, 1816, the General, becoming somewhat excited by what he thought the prospect of "a brush with the Dons," had written to Livingston that he hoped to have the latter with him in case of a campaign. Early in 1823, President Monroe had tendered to General Jackson the post of Minister to Mexico, which the latter had declined. On that occasion he had written the following letter to his friend: —

"*Hermitage*, March 24, 1823.

"My Dear Sir: On the receipt of your letter of

the 25th ult. I had only time by the return mail to acknowledge its receipt, and say to you that on the subject of the mission to Mexico I had not been consulted, and that I had declined accepting of this mission.

"It was a just deduction of my friends to conclude that I had been consulted before my nomination to the Senate, and, of course, that I would accept the appointment; and many of them may conclude, under this impression, that I am very fickle, when they learn that I have declined; for this reason, I have thought it due to you that you should be informed truly on this subject, and also my reasons for declining.

"The first I heard of the intention of the President was in a letter from Major Eaton, our senator, who advised me that Mr. Monroe had sent for and consulted him upon the subject, inquiring his opinion whether I would accept, to which the Major replied that he could form no opinion upon the subject. Mr. Monroe expressing a wish that he would assure me of his friendly views in making this nomination, I immediately answered that I would not accept; and a few days after this answer to Major Eaton, I received Mr. Monroe's letter advising me of his nomination and the approval of the Senate of the United States, to which I replied that I could not accept for the reasons following in substance.

"The present unhappy revolutionary state of Mexico, with an oppressed people struggling for their liberties against an Emperor whom they have branded with the epithets usurper and tyrant, convinces me that no minister from the United States would, at this period, effect any beneficial treaty for his country; and of the impolicy of a republican representative at a court, which might be construed as countenancing the empire in opposition to a

republic. The people of Mexico, in their honest efforts for freedom, command my warmest sympathies; and their success is intimately connected with the ultimate and general triumph of those liberal principles for which our Revolutionary worthies fought and bled, and which now form the pride and boast of United America. With these feelings and wishes, which I believe to be general, and in unison with my fellow-citizens, I did believe my situation at Mexico would be embarrassing to me, independent of the conviction that I was rendering no service to my country, when, by appearing at that court, it might strengthen the tottering crown of Iturbide, and enable the tyrant to rivet the chains of despotism upon his country. To render service to my country could alone constitute any motive for again acting in a public capacity. You will find from my reasons stated, that in consulting my own feelings I have not been unmindful of or uninfluenced by considerations connected with the best interests of my country, which I trust have heretofore and shall always govern my conduct. Had the affairs of Mexico been in a different condition, had the voice of the people governed, my conclusion would have been different; for I believe it the true principle of our government, that every man's services belong to the nation when they are required by the unsolicited voice of his country; and the appointment, being made without consulting me, embraced what I believe ought to be the governing rule of the President in making his nominations. Had I accepted this mission, it would have been among the first of my wishes to have had you with me. Should I ever be again brought by the unsolicited call of my country on the public or political theatre, I should calculate to have you near me; but on such an event I do not calculate. I am no intriguer. I would not act, in

one single instance, that character for all the public favor that could be bestowed. My country has brought my name before the American nation, and the people must decide. The presidential chair is a situation which ought not to be sought for, nor ought it to be declined when offered by the unsolicited voice of the people. To their choice the Constitution has left it, and happy for the permanency of the constitutional government and the perpetuation of our Union, if designing demagogues will let the people exercise this, their constitutional privilege, without attempting to thwart it by subtle intrigue and management.

"On the receipt of this, if leisure permit, I would thank you for your views of the correctness of my decision and the ground I have assumed and on which I have always practised, and, I would add, I have grown too old in the practice ever to change.

"Present myself and Mrs. J. respectfully to your lady and daughter, and to Major Davezac, and accept assurances of my friendship and esteem.

"ANDREW JACKSON.

"EDWARD LIVINGSTON, Esq.

"P. S. I have not had leisure to read your report through. As far as I have gone, I approve it fully. If the penitentiary system can be established to meet your views, it will be a happy amendment to the criminal code, and the name of E. L. will be handed down to posterity as the greatest legislator of his day.

"A. J."

The attachment between Jackson and Livingston, so well formed and so long cherished, acquired further strength by their residence together at Washington from 1823 to 1825. The latter supported his friend ardently

in the unsuccessful presidential campaign of 1824, and from that time did not flag in the zeal or activity of his exertions until the more fortunate result of the election in 1828 was achieved. His opportunities for knowing Jackson being generally understood, he was appealed to by influential politicians from different parts of the country, to say whether or not Jackson was an ignorant and passionate man; whether or not he had any respect for laws or constitutions; and whether it was true or not that he had little understanding, or that he had not received anything that could be called education; and whether or not he was really capable of writing a decent letter. He industriously answered these inquiries, detailing and explaining the General's conduct during the defence of New Orleans, and the circumstances of the declaration of martial law. In one of these responses, addressed to Timothy Pickering, he wrote, referring to the period of the campaign: "During this time I enjoyed his confidence, which I should esteem it one of the greatest misfortunes of my life to have at any time since been deprived of. I think, therefore, that I know him well. I have seen him in circumstances of most extraordinary difficulty, amid the greatest dangers and perplexities, and in the hour of victory and triumph, and witnessed the resources, the energy, firmness, courage, and moderation which distinguished his whole conduct in these several situations,—conduct always adapted to the occasion which rendered it necessary, without the slightest attention to the effect which his measures might have upon himself. I am not writing his panegyric, or I could give instances of all that I allege. I am giving, what you asked, my honest opinion."

In September, 1828, whilst the presidential canvass which resulted in Jackson's first election was raging,

and exciting the whole country, Mr. Livingston visited, on a purely professional errand, the city of Harrisburg, among whose inhabitants he had not a single acquaintance. He was, therefore, surprised to receive, as soon as his arrival was known, an invitation to a public dinner from the Democratic leaders in the city. He accepted the honor, apparently for the purpose of delivering a fervid speech in the support of Jackson. The following was the toast to which the speech was a response: —

"The Honorable Edward Livingston, our distinguished guest. His civil attainments adorn the records of his adopted State, and his military services at Orleans will remain bright on the page of history as long as that glorious victory is remembered by freemen. The people of Pennsylvania hail him as the talented advocate of the rights of man, and the early and firm friend of General Jackson."

On this occasion, Mr. Livingston, after touching upon the distinctive principles of the Democratic party, spoke mainly, with great feeling and power, of the personal character imparted to the contest by the opposers of "a man whose reputation was identified with that of his country, the measure of whose glory he had filled to overflowing." He closed the reference to this topic with the following allusion: —

"It may be remarked, to the honor of our country, that in no other is the female character held more sacred. A woman may travel alone from one extreme of the Union to the other, without an insult, unprotected but by her modesty and the respectful courtesy that is paid to her sex; and everywhere she would find a champion to avenge even an insulting look. Before the present contest, the most violent zealot of a party, or the most de-

graded of the vile tribe who prostitute their talents to the political aggrandizement of others, has not dared to stain the pages of our papers with the remotest allusion to female character. It was reserved for this controversy to change this honorable feature in the character of our country, by a ruffian attack on that of a meek, pious, charitable, honorable matron, — an attack as false as it is base and unmanly.

"Now, Gentlemen, examine to what all this leads, and say whether we have not something more important than the mere success of our candidate at stake on this election. If these means prevail, they will again be resorted to; they will be met by similar efforts; that candidate will not succeed who is shown to be best suited for the station, but he who can most effectually vilify the character of his opponent, and of those who support his pretensions. Men of respectability will withdraw from the degrading contest, both as principals and supporters; the vile and worthless alone will fill your offices; and men of integrity and honor will be drawn to seek, under hereditary succession to office, a refuge from the disorders of a democracy thus conducted.

"I have ventured to enlarge upon this theme, Gentlemen, partly to prove, that, if we wish to preserve our republican institutions and the morals of our people from pollution, it is necessary to strain every nerve to put down this first attempt upon the integrity of our system, and partly because the expression of your indignation and contempt of these unworthy attacks may discourage any attempt by our friends to contend with the same weapons. Strong in the character, services, and talents of the men we support, we need no such means; and we disdain them even if they were necessary to success.

"No, Gentlemen, we have better grounds for confidence. The man we support did not court the office which the voice of the country calls him to fill. To Republicans in Pennsylvania I need not repeat the many titles he has to their support."

The following was the conclusion of this discourse: —

"For my own part, when my duty required me to make the selection between the two candidates, I did not hesitate, — not from any dislike to Mr. Adams, for I had none, — on the contrary, I had a high opinion of his talents, and believed in his political and private integrity, — but from a decided preference to the other candidate, whose qualities I thought better fitted him for the place. Nor has reflection or any subsequent event changed the opinion I had then formed. I first knew him when we were members of the same House of Representatives, more than thirty years ago; and he then inspired me with respect for the firmness of his character, the purity of his political principles, and the sound understanding he evinced in their support. From that time, we never met until he was called to conduct the defence of the city in which I lived. In his conduct of that defence he developed the resources of a mind that proclaimed him equal to any task which the service of his country could require. Energy, combined with prudence; courage, to face not only the dangers of the field, but to incur the responsibility of every measure, however unpopular, that was necessary for the defence of the country; stern integrity; the most disinterested contempt of private emolument; courtesy of manner that won the hearts of all who approached him, and that commanded the admiration even of the enemy, in his epistolary intercourse; and, above all, a respectful submission to the laws, even

when they were so administered as to impose a heavy penalty for acts which he conceived himself forced to do for the preservation of those laws. These qualities, when your public affairs are placed under his direction, will enable him to conduct them with wisdom and success. He may not, perhaps, with the dexterity of others, twine the cobweb thread of diplomatic sophistry; but he will pursue the interest of his country, in its foreign relations, in the plain path which honest intentions will always mark out, disdaining any attempt to overreach, with too much sagacity to be himself deceived, and with a firmness that will never be overawed. This, Gentlemen, is worth all the skill in diplomacy of which we have heard so much, and seen so few beneficial effects. At home, he will perform his duty, and see that others perform theirs. The seat of government will not, at stated seasons, be deserted; nor will the duties of all the departments be heaped upon one head. All this we have a right to expect from the character of the candidate we support. That he will be chosen, there can be now no doubt. Let us all endeavor that it shall be by so triumphant a majority as will show the indignation of the people against the foul means by which he, and his country's honor through him, have been assailed. We shall then avoid the recurrence of the disgraceful scenes that now surround us; we shall become a happy, a united, a republican people; and although we shall always know our parties and our preferences, they will not, probably, be attended with the excesses which characterize the present contest, — for the event will have proved that they are useless, as well as unworthy of a free people.

"I have not ventured to mix in the important topics upon which I have touched any individual feeling. I must conclude with the expression of that with which my

heart is filled, gratitude for your unexpected and highly flattering attention, and the hope given by your kindness, that I shall leave many friends where, but two days since, I had not even an acquaintance. I offer you, Gentlemen, a toast analogous to the sentiments I have expressed, and which contains an opinion I honestly and conscientiously entertain: —

"The election of Andrew Jackson. It will establish our honor abroad, insure union and tranquillity at home, and rescue the principles of our government from defamation."

The election of representative in the next Congress from the New Orleans district had already taken place, and the friends of Livingston had this time been defeated. We have seen that his first election had been unanimous. Two years later, the supporters of the Federal administration had presented a party candidate against him, but with a not encouraging result. A third time, this kind of opposition had become stronger; and it was now successful. The length of time required, at this period, to make the journey between Washington and New Orleans, and the season of the year at which the Congressional vacation occurs, especially in each alternate year, precluded the members from Louisiana from often seeing their constituents. Livingston had visited home but once during six years. This continued absence — though excused by the circumstances just now mentioned, and by the fact, that during one long vacation he had been detained by duty in a committee charged by the House with a most important investigation, and at another by the task of prosecuting the claims of his constituents for the value of slaves carried off by the British during the siege of New Orleans, not to speak of the repose needed for his labors upon the Code — was wielded effectually by the

politicians who desired his seat. When General Jackson heard of the result, he wrote to his friend, under date of August 2, 1828:—

"I sincerely regret to hear that you have lost your election. I was fearful of this, when I read your letter and found you had not returned to New Orleans. Two speeches to your constituents would have given you a large majority. Your absence, combined with the system of detraction, by the supporters of the administration, which was unsparingly wielded against you, gulled the people, and defeated your election. Your friends still think they will be able to elect you to the Senate of the United States; but unless you visit New Orleans in the fall, you will be beaten. Your enemies have wielded your absence against you, and will still use it to your injury. You must visit your friends this fall to succeed, when we will expect to see you as you pass, with your family, at the Hermitage, to whom present Mrs. J. and my salutations."

Livingston was doubtless well aware, whilst the canvass was pending, that by attention to those means the neglect of which is here regretted, he might save his election. But although he desired to retain his place, he preferred not to go out of his way in concessions to the popular requirements. He issued an address to his constituents, telling them the plain truth of the matter, in which, after referring to the constancy of his labors, he added: "Yet this great personal inconvenience, this sacrifice of interest, this necessary and incessant attention to the duties of my place, have, by the inveterate spirit of party, been imputed to me as a fault. I have, it is said, treated you with contempt, by not abandoning the duties confided to me, in order to come and court your favor. I would have been more worthy of con-

fidence, according to these wretched scribblers, if I had deserted your interests, and those of the nation, and regularly come on to solicit your votes." But this manner of reasoning was not conclusive with the majority of those to whom it was addressed; and the representative whom they had at first chosen with a unanimous voice, who had served them with zeal and advantage, who was willing to continue in their service, whose character, genius, and fame reflected honor upon them, and whose withdrawment from Congress would be a material subtraction from the dignity of that body, was recalled by the votes of the electors, and Edward D. White was returned in his place.

The legislature of Louisiana, at its next session, elected Mr. Livingston a Senator of the United States. Whether, in the mean time, he had visited New Orleans, in accordance with General Jackson's counsel, or had taken any steps to further his own elevation, or not, I have been unable to ascertain.

CHAPTER XV.

SENATOR OF THE UNITED STATES.

The Satisfaction of Livingston's Ambition — His Social and Domestic Habits — Letter to his Daughter — Jackson's Desire to employ him in the Government — Offer of the Mission to France — Peculiar Attractions of the Post for Livingston — Letters from Lafayette — Necessity of Declining the Mission — Appearance in the Senate — Speech on Foot's Resolution — Correspondence with Bentham — Project for adapting the Livingston Code to the Use of the Federal Government — Senatorial Independence.

LIVINGSTON had no political ambition which was not now entirely satisfied. The promulgation of his system of penal law continued, as its preparation and restoration had long done, to occupy his thoughts and to employ his industry, far more than did his official labors or any plans for his own advancement. But not all this occupation could ever, at any time, engross his faculties, or blunt his relish for constant literary culture, for genial society, or, above all, for the daily pleasures of the fireside at home. From his wife or daughter he was seldom, and never long, separated. When absent, he invariably wrote to the former every day; and the latter, whenever she could not enjoy his conversation, always received from him the best possible substitute. Of his letters to her, the following, written at this period, is a characteristic passage: —

"Have you never a poet in your train? Here is a subject for one. I had read in the papers that the great success of the railroads in England had induced the own-

ers of canals to turn off the waters from them, and change them into roads. I imagined the water-nymphs joining in a chorus of joy, at the prospect of having their streams restored to their natural channels, meandering through flowery meads, dancing gayly over sunny pebbles, leaping in all the joy of nature over the rocks of their cascades, released from the imprisonment of long, rectilinear, muddy canals, where they were forced to bear the burdens of inevitable barges and reduced to the condition of dull stagnant pools. Instead of the vulgar slang of boatmen and traders, to listen to the fine frenzies of the poet and the lover of nature, etc., etc., etc. What do you think of the *cadre?*"

Mr. Livingston became a Senator on the same day that General Jackson entered upon the Presidency. The latter at once, as was to be expected, desired to employ his friend in the administration. And yet he had in his gift no place for which the senatorship could be exchanged as a clear matter of advancement, and no place the duties of which were better suited to the tastes of the new senator. The mission to France, alone, had for Livingston, especially at that moment, some attractive features, which might have induced him as matter of choice — though not without hesitation or doubt — to resign his seat in the Senate. His system of penal law had already received a very general notice and admiration from the publicists of Europe, and especially from those of France, where the work was destined shortly to procure for him, as we shall see, the rare honor of an election to membership of the French Institute. He had never visited Europe, nor seen many of the European publicists with whom he had long corresponded. And France was the home of one of the oldest, as well as warmest and most constant, of his personal friends, — Lafayette. The

venerable Marquis wrote to him, under date of March 19, 1829: —

". . . . You will easily believe I am anxious to be informed of your destination in the new presidential arrangements. Are you a member of the Cabinet, or, as it appears our excellent friend, Mr. Brown, contemplates to return home, will you, in that case, come to France as a minister? How pleasing to me this last circumstance would be, I know it is superfluous to express. Contrary winds keep back the New York packets; I hope that of the 10th of March may have a better chance, so as to give me speedy information of your personal situation. The death of poor Mrs. Jackson has been to me a matter of much grief. She was particularly kind to me, and I felt for her much esteem and affection. . . . .

"Present my best respects to the President. My children join in my own and George's anticipations to welcome you on this side of the Atlantic, and I am, with all my heart,

"Your affectionate friend,

"LAFAYETTE."

On the 16th of April, Lafayette wrote to Livingston again on this subject: —

"MY DEAR FRIEND: The packet of the 10th being the last we have received, and Mr. Van Buren's Secretaryship of State having been announced, I had anticipated the pleasure to see you and family in France, as Plenipotentiary Minister. Our friend, and very justly regretted, Mr. Brown, has thought it necessary, owing to Mrs. Brown's state of health, to return home, and

knowing your intimacy with the President, and his experienced confidence in you, I was assured that the appointment greatly depended upon you; nor did I think that you should find in Mrs. Livingston, Cora, and our friend Davezac, great objection to your accepting a mission to France. Further information, by way of Liverpool, discourages my hope to welcome you on this side of the Atlantic, so that I write these few lines, which yet may pass you as we past each other on the western waters about four years ago.

. . . . . .

"The session will keep me in town until the end of June. My son and colleague begs to be affectionately and respectfully remembered. Le Vasseur has been, since the beginning of the year, settled in his library establishment. You know he contemplates writing something on our American delightful tour. But he felt the impropriety of such a publication in the so intimate situation he did occupy near the principal object of the related events; nor would I take any cognizance of his manuscript, thereby avoiding not only the participation in flattering remarks, but also the responsibility of omissions relative to facts and names, which, although engraved in my heart, might have extended his observations or the bounds of his book. So that if it comes out, I shall then read it for the first time.

"Although I have ever thought it a matter of propriety, situated as I am, not to meddle either with party disputes or individual appointments, I will tell you confidentially, as your old friend, and also as a friend to General Jackson, that a rumor of numerous changes has excited some uneasiness on this side of the Atlantic. . . . . Indeed, American situations on this side of the ocean are well filled. What arrangements the President will make

I do not know, nor do I mean to intrude myself in any interference. But as public concerns are going on well, I think, between you and me, that wherever he means no change, private uneasiness ought to be relieved.

"Adieu, my dear Edward; present my affectionate respects to Mrs. Livingston and Cora. Remember me to Davezac and other friends wherever you are, and believe me forever,

"Your affectionate friend,

"LAFAYETTE."

It was a correct surmise, that the mission to France was the office which the President designed for Livingston. There was a most important and delicate errand to be committed to the minister, namely, to obtain from the French government a tardy indemnity for the spoliations which had been committed upon American vessels, under authority of the Berlin and Milan decrees of Napoleon. This was one of the subjects that received Jackson's earliest official attention, and he thought Livingston the best agent he could send for the accomplishment of the purpose in view. Upon him accordingly this office was pressed, during the first month of the administration, — the period of the above letters from Lafayette. Thus solicited, Livingston inclined, on the whole, though with some reluctance and misgiving, to accept the mission. But being in the month of April urged by the President to accept immediately and depart soon, he was obliged to decline the post, because some circumstances in his private affairs constrained him to stay at home till October. Such a delay was too long for the views of General Jackson, and Mr. Rives, of Virginia, was sent to the French Court. In December following, Mr. Livingston first appeared in the Senate. Of his late asso-

ciates in the House, Mr. Webster had preceded, and Mr. Clay soon followed him.

Mr. Livingston made but few set speeches in the Senate. No senator was listened to with more profound respect than he, whenever he spoke; but mere oratory he now left, for the most part, to others. His most elaborate speech was his first, delivered on the 15th of March, 1830, occupying the whole day, and covering about sixty printed pages in the report. It was part of the memorable debate upon Foot's resolution, raising the question of the true policy of the government with respect to the public lands, and best known as the occasion of the celebrated oration of Webster, in reply to Mr. Hayne, on the rights of the States, and the nature, interest, and glory of the Federal Union. It was a most discursive debate, a fact to which Mr. Livingston, on rising to speak, referred in the following humorous strain: —

"The multiplicity and nature of the subjects that have been considered in debating a resolution with which none of them seem to have the slightest connection, and the addition of new subjects by which every speaker has thought it proper to increase the former stock, has given me, I confess, some uneasiness. I feared an irruption of the Cherokees, and was not without apprehensions that we should be called on to terminate the question of Sunday mails; or, if the Anti-Masonic Convention should take offence at the secrecy of our executive session, or insist on the expulsion of all the initiated from our councils, that we should be obliged to contend with them for our seats. Indeed, I had myself serious thoughts of introducing the reformation of our National code, and a plan for the gradual increase of the navy, and am not yet quite decided whether, before I sit down, I shall not urge

the abolition of capital punishments. In truth, Mr. President, the whole brought forcibly to my recollection an anecdote told in one of the numerous memoirs written during the reign of Louis XIV., too trivial, perhaps, to be introduced into this grave debate, but which, perhaps, may be excused. A young lady had been educated in all the learning of the times, and her progress had been so much to the satisfaction of the princess who had directed her studies, that, on her first introduction, her patroness used to address her thus: 'Come, Mademoiselle! discourse with these ladies and gentlemen on the subject of theology; so, that will do. Now talk of geography; after that, you will converse on the subjects of astronomy and metaphysics, and then give your ideas on logic and the belles-lettres.' And thus the poor girl, to her great annoyance, and the greater of her auditors, was put through the whole circle of the sciences in which she had been instructed. Sir, might not a hearer of our debates for some days past have concluded that we, too, had been directed in a similar way, and that you had said to each of the speakers, 'Sir, please to rise and speak on the disposition of the public lands; after that, you may talk of the tariff; let us know all you think on the subject of internal improvement; and, before you sit down, discuss the powers of the Senate in relation to appointments, and the right of a State to recede from the Union; and finish by letting us know whether you approve or oppose the measures of the present, or the six preceding administrations?' The approximation, Sir, of so many heterogeneous materials for discussion must provoke a smile; and most of those who have addressed you, while they lamented that subjects unconnected with the resolution had been introduced into debate, rarely sat down without adding to the number. For my own

part, I think the discussion may be turned to useful purposes. It may, by the interchange of opinion, increase our own information on all the important points which have been examined, while, not being called on for a vote, we may weigh them at leisure, and come to a conclusion, without being influenced by the warmth of debate."

Nevertheless the speaker proceeded to follow in some degree the general example of digression, and to discourse upon some topics not immediately relevant to the point of Mr. Foot's resolution, though confining himself strictly to responding to what had fallen from others in the course of the discussion. One of these digressions was the following very full and thorough vindication of himself and his colleagues, including General Jackson, for their vote, mentioned in the fifth chapter of this volume, against the address of Congress to Washington, as prepared and insisted upon by the Federalist majority of the time:—

"I have given you, Sir, so much of the history and state of parties as was necessary for the understanding of the refutation I must make of a charge brought against me and those with whom it was my happiness to associate, and will always be my pride to have acted, in those times. I repeat the charge, verbatim, from the printed speech of the senator from Massachusetts (Mr. Webster). Speaking of the merits of New England, which I, at least, have never attempted to lessen, he says he 'will not rake into the rubbish of by-gone times to blot the escutcheon of any State, any party, or any part of the country;' yet, Sir, in the same page, he endeavors to fix a blot of the blackest ingratitude on a party, on men (I do not speak, Sir, of myself) who have rendered most important services to the country, to one of whom it has given the highest mark of its confidence and esteem, and all of whom were, in the

transaction alluded to, much more sinned against than sinning. The honorable gentleman goes on to say: 'General Washington's administration was steadily and zealously maintained, as we all know, by New England. It was violently opposed elsewhere. We know in what quarter he had most earnest, constant, and persevering support in all his great and leading measures. We know where his private and personal character was held in the highest degree of attachment and veneration; and we know, too, where his measures were opposed, his services slighted, and his character vilified. We know, or we might know, if we turn to the journals, who expressed respect, gratitude, and regret, when he retired from the chief magistracy, and who refused to express respect, gratitude, or regret; I shall not open these journals.'

"Sir, the honorable gentleman would have done well to open the journals, or not to have referred to them. If he had opened them, he would have found the name of the individual who addresses you arrayed with those of men more worthy of note, in the vote to which he alludes. If he had opened the debates which led to that vote, as I think he ought to have done, he would have seen how utterly void of foundation is the charge he has brought. I do not think the gentleman intended any personal allusion to me; the terms of civility on which we are, forbid it; the consciousness of having said nothing to provoke the attack, forbids it: but, Sir, the individual who cannot arrogate to himself sufficient importance to justify the supposition that he was the object intended, was, at that time, the representative, the sole representative, of the first commercial city in the Union. That individual is now one of the members of this body, representing a sovereign State. He owes it, therefore, to

those who have offered him these marks of their confidence to show that they were not unworthily bestowed; he owes it to himself to disprove the reflection which the allegation casts on his character. Suffer me, also, Mr. President, to remark that this very charge was used during the late election; and that the refutation I am about to give was so widely diffused that it is somewhat singular it should never have come to the senator's knowledge, or that he should have forgotten it if it had. Yet one or the other must have been the case, or he would not now have repeated the tale, nor, by incorporating it in his eloquent harangue, have given new currency to a refuted calumny which had long before been nailed to the counter. Since the honorable gentleman believes the story to be true, and surely he would not otherwise repeat it, hundreds of others must give it the like credit; and it increases the obligation I am under to explain all the circumstances attending it.

"I have shown, Sir, what were the doctrines and measures of the Federal party at that time; during the whole of the presidency of Washington they were predominant in both Houses; and as Washington was the head of the government, one of their greatest objects was to cover all their proceedings with the popularity of his name, to represent all opposition to their measures as personal hostility to him, and to force the Republican party either to approve all their measures, or, by opposing them, incur the odium of being unfriendly to the Father of his Country. In this they were for the most part defeated. The universal confidence reposed in the high character of Washington, the gratitude felt for his services, the veneration for his name, had practically produced the effect, in our government, which a constitutional maxim has in that of England. He could not, it

was believed, do wrong; most certainly he never meant wrong; most certainly his ardent wishes were for the happiness of the country he had conducted through so many perils, and the preservation of that form of government which had been adopted under his auspices. Yet measures were adopted, during his presidency, which a very large proportion of the country thought injurious to their interests, and, on one occasion, a majority of their representatives deemed them to be an infringement on their privileges. None of these were ascribed to the President; a practice which he introduced enabled us to ascribe to his administration (to which in truth they belonged) all the measures of which we disapproved. The practice alluded to was that of assembling the Heads of Department in a Cabinet Council, and being guided, as was generally understood, by the opinion of a majority in all important concerns. Hence the official acts of the President came to be considered as those of his Cabinet, and were, in common parlance, called the acts of the administration; and they were opposed, when it was deemed necessary, and canvassed, and freely spoken of in debate, without any hostility being felt, or supposed to be felt, towards the President. Indeed, several of those most prominent in opposition to acts of the administration were men for whom Washington had the highest esteem, and who were among those who most admired and revered *him*.

"Of the acts to which the Republican party were opposed it may be necessary to specify some, in order to show that the opposition was not a frivolous or a personal one.

"The Chief Justice of the United States was sent as a Minister Plenipotentiary to England, while he held his judicial office, which he retained until after his re-

turn; thus, in our opinion, blending the Executive and Judicial departments, directed by the Constitution to be separated, and setting an example which might create an undue influence on the bench, in favor of the Executive.

"This minister negotiated a treaty which contained stipulations requiring the agency of the House of Representatives, in the exercise of their constitutional powers over the subject of them, to carry into effect. To enable them discreetly to exercise these powers, the House respectfully requested the communication of such papers, in relation to the treaty, as could, without injury to our foreign relations, be made public. This request the President was advised to refuse; and the refusal was grounded on a denial of the constitutional right of the House to exercise any discretion in carrying the treaty into effect. On this refusal, the House of Representatives passed a resolution declaratory of the right which the President had denied. I will not trouble the Senate with adverting to any other measures which I, and those who acted with me, opposed. We opposed them, Sir, without, in any instance, forgetting the sentiments of respect, gratitude, and high admiration, which were due to the name and character of Washington. We believed that it would have been a dereliction of duty to give up the independent expression of our opinion, because it was contrary to measures falsely ascribed to a name we revered; and conscious of the weight of that name, I may, without vanity, say there was some degree of merit in stemming the tide of popularity that was attached to it.

"The mission of Mr. Jay took place after the second election of General Washington, and the discussions on the treaty in the first session of the fourth Congress, the

seventh year of his Presidency. In his speech on the opening of the second session of the same Congress, (I repeat, Sir, what I formerly wrote on this occasion,) he alluded in affecting terms to his approaching retirement from office. I can solemnly say for myself, that, on this occasion, so far from any ill feeling towards the President, none among those who arrogated to themselves the title of his exclusive friends could feel more sincerely, or were more disposed to express every sentiment of gratitude for his services, admiration for his character, or wishes for his happiness, than I was. These were ideas that had grown up with me from childhood. I had never heard the name of Washington pronounced but with veneration by those near relatives who were engaged with him in the same perilous struggle. Independence, liberty, and victory, were associated with it in my mind; and the awful admiration which I felt when, yet a boy, I was first admitted to his presence, yielded only to the more rational sentiments of gratitude and national pride, when, at a maturer age, I could appreciate his services, and estimate the honor his virtues and character had conferred on the nation. I had seen him in the hour of peril, when the contest was doubtful, and when his life and reputation, as well as the liberties of the country, depended on the issue. I had seen him in the moment of triumph, when the surrender of a hostile army had secured that independence. My admiration followed him in his first retreat, and was not lessened by his quitting it to give the aid of his name and influence to the union of the States under an efficient government. In addition to this, he had received me with kindness in my youthful visits to his camp; and, without having it in my power to boast of any particular intimacy, circumstances had thrown me frequently in the way of receiving from him such atten-

tions as indicated some degree of regard. With these motives for joining in the most energetic expressions of gratitude, with a heart filled with sentiments of veneration, and desirous of recording them, my concern can scarcely be expressed, when I found that I must be debarred from joining my voice with those of my fellow-citizens in expressing those feelings, unless in the same breath I should pronounce a recantation of principles which I then thought, and still think, were well founded, and declare that I approved measures which I had just solemnly declared I thought injurious to the country.

"Thus, Sir, it was contrived. At that period the President opened the session by a speech, (the more convenient mode of sending a message having been introduced five years afterwards by Mr. Jefferson,) and the House made an answer, which they presented in a body. The answer on this occasion was most artfully and most ably drawn. It was the work of a Federal committee, and was supported by a Federal majority. It contained, as it ought to have contained, every expression that gratitude, veneration, and affectionate regret could suggest; and to the adoption of these there would not have been a dissenting voice; it would have been carried, not only unanimously, but by acclamation. But the dominant party had other views: it was to be made the instrument of degrading their opponents, if they could vote for it, or of holding them up to all posterity as opposers of the Saviour of his Country, if they refused to pronounce their own condemnation. They preferred a paltry party triumph to the glory of the man they professed to honor, and deprived him of the expression of an unanimous vote, that they might have some pretence to stigmatize their opponents with ingratitude. The press, Sir, the omnipotent press, and the publicity

of our debates, have enabled me, even at this distant day, to defeat this unworthy end, — unworthy of the honorable men who contrived and executed it, and which nothing but the excitement of party could have suggested to them.

"To understand this fully, Sir, I should read to you the whole of the address. Its general character I have stated. But I will confine myself to one or two passages, which show what was endeavored to be forced upon us, and the amendments offered will show what we were willing to say; and I will then ask who it was that refused a unanimous expression of gratitude, respect, and merit.

"The debates of that period were very concisely taken down, but (in Carpenter's Debates, p. 62) we find enough for our purpose. It is there stated that Mr. Livingston expressed his sorrow 'that the answer was not so drawn as to avoid this debate, and his sincere hope that parties would so unite as to make it agreeable to all. He moved some amendments, first, to correct an error in the phraseology, which were adopted, and, in the course of his remarks, used these expressions: "He hoped, notwithstanding the tenacity of adherence to words, that all might agree in the address; he would be extremely hurt, he said, could he conceive *that we differed in sentiments of gratitude and admiration for that great man;* but, while he was desirous to express this, he could not do it at the expense of his feelings and principles. The former he might sacrifice, but the latter he could not to any man."'

"I invite the particular attention of the Senate to the passage which I proposed to alter as it stood in the address; it was in these words: —

"'And while we entertain a grateful conviction that your *wise, firm,* and *patriotic administration* has been

signally conducive to the success of the present form of government, we cannot forbear to express the deep sensations of REGRET with which we contemplate your intended retirement from office.' Now, Sir, mark what were the words objected to in this sentence; bear in mind the distinctions that have been drawn between the character of the President and that of his *administration;* remember what was the sense in which that word was universally used at the day; recollect, too, what I have just said of the opposition to one of the leading measures of that *administration*,—and you will then be enabled to judge whether I, and those with whom I acted, could give our assent to this passage as it stood. To show, however, that, while we could not, with consistency or truth, say that the measures of the cabinet were wise and patriotic, we were perfectly willing to use these epithets as applied to the President, I moved to strike out the words 'wise, firm, and patriotic administration,' and insert 'your wisdom, firmness, and patriotism;' the sentence then would have read thus: 'while we entertain a grateful conviction that *your wisdom, firmness, and patriotism* have been signally conducive to the success of the present form of government, we cannot forbear to express the DEEP sensations of REGRET with which we contemplate your intended retirement from office.' Now, Sir, compare this clause, which we were all ready to vote for, and did vote for, with that which was supported by the majority, and say which of them expresses the greatest veneration for the person and the personal character of Washington, that which ascribes wisdom, firmness, and patriotism to the measures of his cabinet, or that which attaches them to himself. Say whether we refused to express *regret* at his retirement, when that word, accompanied by an epi-

thet most expressive of its intensity, is readily adopted. Say who were the real friends to the glory of our great leader in war and director in peace, those who, for a paltry party triumph, deprived him of an unanimous expression of thanks and admiration, who forced him to appear rather as the chief of a party than in his true character of the man uniting all affections, regretted, beloved, venerated by all his fellow-citizens, or those who intreated that, on this occasion at least, party considerations should be laid aside, and that they might be permitted to join their voice to that of their country, and of the world, in expressing the sentiments with which their hearts were filled. Say, finally, Sir, whether the senator from Massachusetts is justified in the allegation, that we refused to express respect, gratitude, and regret, on the retirement of Washington; or what is more than insinuated, that we slighted his services and vilified his character. Sir, the register I have quoted shows, that I supported my amendment by expressing the very sentiments you have just heard; and I must add, that, shortly after this transaction, while my votes, speeches, and conduct were fresh in the recollection of my constituents, my term of service expired, and I was reëlected by an increased majority. Would a man entertaining the sentiments of Washington that have been ascribed to me have received the votes of a city where his name was adored? Nay, more, Sir; one of the most conspicuous of those who have incurred the reproach of the senator from Massachusetts, and for whose sole use it was perhaps designed, — the President of the United States, — was not long since selected by the veteran reliques of the Revolutionary War, the chosen companions in arms of their venerated commander, the New York Society of Cincinnati, as one of the very few honorary members upon whom that distinc-

tion has been bestowed. They have, since that, done me the same honor. Would the venerable remnant of the friends and companions of Washington, associated under his auspices for the purpose of cherishing the friendships contracted during the contest he so gloriously conducted, and watching over his fame, so inseparably connected with their own — would they have conferred this distinction on two men, who had, at any period of their lives, shown themselves his enemies or detractors? Me, Sir, they knew from my childhood; my whole life was before them. At the time these votes were given I was their immediate representative. Many of them were opposed to me in the politics of the day; but they knew my conduct to have been such as I have described, and they did justice to my motives, and most assuredly would not have joined in my unanimous association to their honorable body, had they doubted the purity of either."

On the same occasion Mr. Livingston expressed, in the following passage, his apprehensions on account of the visible growth of party spirit: —

"These, Mr. President, were some of my reasons for speaking of the history of party under our government. I had another. It was to mark the difference between the necessary, and, if I may so express it, the legitimate parties existing in all free governments, founded on differences of opinion in fundamental principles, or an attachment to, or dislike of, particular measures and particular men, — between these and that spirit of dissension into which they are apt to degenerate; to throw the weight of my experience, and the little my opinions may have, in the scale, and lift up a warning voice against the indulgence of the passions which lead to it, the allusions that irritate, the personal reflections that embitter debate, and the altercations that debase it. The

spirit of which I speak originates in the most trifling as well as the most important circumstances. The liberties of a nation or the color of a cockade are sufficient to excite it. It creates imaginary, and magnifies real causes of complaint; arrogates to itself every virtue, denies every merit to its opponents; secretly entertains the worst designs, publicly imputes them to its adversaries; poisons domestic happiness with its dissensions; assails the character of the living with calumny, and, invading the very secrets of the grave with its viperous slanders, destroys the reputation of the dead; harangues in the market-place; disputes at the social board; distracts public councils with unprincipled propositions and intrigues; embitters their discussions with invective and recrimination, and degrades them by personalities and vulgar abuse; seats itself on the bench; clothes itself in the robes of justice; soils the purity of the ermine, and poisons the adminstration of justice in its source; mounts the pulpit, and, in the name of a God of mercy and peace, preaches discord and vengeance; invokes the worst scourges of Heaven, war, pestilence, and famine, as preferable alternatives to party defeat: blind, vindictive, cruel, remorseless, unprincipled, and at last frantic, it communicates its madness to friends as well as foes; respects nothing, fears nothing; rushes on the sword; braves the dangers of the ocean; and would not be turned from its mad career by the majesty of Heaven itself, armed with its tremendous thunders. The *tristes iræ* of the poet, —

> 'quas neque Noricus
> Deterret ensis, nec mare naufragum,
> Nec sævus ignis, nec tremendo
> Jupiter ipse ruens tumultu;'

and to which, with an elegance of expression and pro-

fundity of thought rarely united, he ascribes the ruin of republics, —

> ' et altis urbibus ultimæ
> Stetere causæ cur perirent
> Funditus, imprimeretqoe muris
> Hostile aratrum exercitus insolens.'

" Yes, Sir, the poet tells us true. These few lines contain a most important lesson. Not long before he wrote them, there existed a confederacy of independent States, united, as ours are, by the same religion, language, manners, and laws. Fair cities, adorned with noble edifices, decorated by the miracles of the imitative arts, governed by wise magistrates, and defended by intrepid warriors, where sages gave lessons of morality and wisdom, poured forth their numerous inhabitants at stated seasons to assist at solemn games, where poets sung, and historians read their instructive pages, to admiring crowds; where the young contended for the prize of agility or strength, and the old recounted their former exploits; where the wisdom and valor and talent and beauty of each State were the boast and pride of the whole. What followed? Civil dissension breathed its poisonous influence over them, and they met to contend, not for the peaceful prizes of dexterity or genius, but in the deadly strife of civil war. Where are their magnificent temples, their theatres, their statues of gods and heroes? They have vanished; they have been swept by the besom of destruction! The ploughshare of devastation has been driven over their walls, and their mighty ruins remain as monumental warnings to free States, of the danger of falling into the excess of party rage."

The remainder of this speech was devoted principally to an elaborate defence of the policy and action of the President against assaults made upon them, in the course

of the debate, by several senators, and to a no less elaborate exposition of Livingston's views of the Constitution, and the theory of the Federal Government, of which the following is a *résumé*, in his own words:—

"I think that the Constitution is the result of a compact entered into by the several States, by which they surrendered a part of their sovereignty to the Union, and vested the part so surrendered in a General Government.

"That this Government is partly popular, acting directly on the citizens of the several States, partly federative, depending for its existence and action on the existence and action of the several States.

"That by the institution of this Government the States have unequivocally surrendered every constitutional right of impeding or resisting the execution of any decree or judgment of the Supreme Court in any case of law or equity between persons or on matters of whom or on which that court has jurisdiction, even if such decree or judgment should, in the opinion of the States, be unconstitutional.

"That, in cases in which a law of the United States may infringe the constitutional right of a State, but which, in its operation, cannot be brought before the Supreme Court, under the terms of the jurisdiction expressly given to it over particular persons or matters, that court is not created the umpire between a State that may deem itself aggrieved and the General Government.

"That, among the attributes of sovereignty retained by the States is that of watching over the operations of the General Government, and protecting its citizens against their unconstitutional abuse; and that this can be legally done,—

"First, in the case of an act in the opinion of the State

palpably unconstitutional, but affirmed in the Supreme Court in the legal exercise of its functions, —

"By remonstrating against it to Congress;

"By an address to the People in their elective functions to change or instruct their representatives;

"By a similar address to the other States, in which they will have a right to declare that they consider the act as unconstitutional and therefore void;

"By proposing amendments to the Constitution in the manner pointed out by that instrument;

"And, finally, if the act be intolerably oppressive, and they find the General Government persevere in enforcing it, by a resort to the natural right which every people have to resist extreme oppression.

"Secondly, if the act be one of those few which in their operation cannot be submitted to the Supreme Court, and be one that will, in the opinion of the State, justify the risk of a withdrawal from the Union, that this last extreme remedy may at once be resorted to.

"That the right of resistance to the operation of an act of Congress, in the extreme cases above alluded to, is not a right derived from the Constitution, but can be justified only on the supposition that the Constitution has been broken, and the State absolved from its obligation; and that, whenever resorted to, it must be at the risk of all the penalties attached to an unsuccessful resistance to established authority.

"That the alleged right of a State to put a *veto* on the execution of a law of the United States which such State may declare to be unconstitutional, attended (as, if it exist, it must be) with a correlative obligation on the part of the General Government to refrain from executing it, and the further alleged obligation on the part of that Government to submit the question to the States by

proposing amendments, are not given by the Constitution, nor do they grow out of any of the reserved powers.

"That the exercise of the powers last mentioned, would introduce a feature in our Government, not expressed in the Constitution, not implied from any right of sovereignty reserved to the States, not suspected to exist by the friends or enemies of the Constitution when it was framed or adopted, not warranted by practice or contemporaneous exposition, nor implied by the true construction of the Virginia resolutions in '98.

"That the introduction of this feature in our Government would totally change its nature, make it inefficient, invite to dissension, and end, at no distant period, in separation; and that, if it had been proposed in the form of an explicit provision in the Constitution, it would have been unanimously rejected, both in the Convention which framed that instrument, and in those which adopted it.

"That the theory of the Federal Government being the result of the general will of the People of the United States in their aggregate capacity, and founded, in no degree, on compact between the States, would tend to the most disastrous practical results; that it would place three fourths of the States at the mercy of one fourth, and lead inevitably to a consolidated Government, and finally to monarchy, if the doctrine were generally admitted, and if partially so, and opposed, to civil dissension.

"These being my deliberate opinions on the nature and consequences of the constructions hitherto given of the Federal compact, and the obligations and rights of the States under it, deeming those constructions erroneous, and in the highest degree dangerous to the Union, I felt it a duty to my place and to my country to say so."

In conclusion of this speech, Mr. Livingston, having alluded to the interior marble columns of the chamber of the House, composed of variegated pebbles united by a natural, calcareous cement, exclaimed: —

"What were they originally? Worthless heaps of unconnected sand and pebbles, washed apart by every wave, blown asunder by every wind. What are they now? Bound together by an indissoluble cement of nature, fashioned by the hand of skill, they are changed into lofty columns, the component parts and the support of a noble edifice, symbols of the union and strength on which alone our government can rest, solid within, polished without; standing firm only by the rectitude of their position, they are emblems of what senators of the United States should be, and teach us that the slightest obliquity of position would prostrate the structure, and draw with their own fall that of all they support and protect, in one mighty ruin.

"A distrust of the justice and good feeling of one part of the Union by another is a most dangerous symptom; it ought not to be indulged even when occasional circumstances justify it. A distrust of the justice of the whole is still more fatal. How can we hope for ready obedience to our laws, if the people are taught to believe in a permanent hostility of one part of the Union towards another, and that every appeal made by reason and argument to their common head is vain? Perseverance will do much; for even if the illustration which has been made of party obduracy were just, we should remember that the hardest marble is worn by a succession of drops; much more may we hope that prejudice, however strong, will yield to the claims of justice, frequently enforced by a repetition of sound argument.

"Menace is unwise, because it is generally ineffectual;

and of all menaces, that which strikes at the existence of the Union is the most irritating. Have those who thus rashly use it, who endeavor to familiarize the people to the idea, have they themselves ever done what they recommend? Have they calculated, have they considered, what one, two, or three States would be, disjointed from the rest? Are they sure they would not be disjointed themselves? That parts of any State, which might try the hazardous experiment, might not prefer their allegiance to the whole? Even if civil war should not be the consequence of such disunion,—an exemption of which I cannot conceive the possibility,—what must be the state of such detached parts of the mighty whole? Dependence on foreign alliances for protection against brothers and friends; degradation in the scale of nations; disposed of by the protocols of allied monarchs to one of their dependants, like the defenceless Greeks. But I will not enlarge on this topic, so fruitful of the most appalling apprehensions. Disunion! the thought itself,—the means by which it may be effected,—its frightful and degrading consequences,—the idea, the very mention of it, ought to be banished from our debates, from our minds. God deliver us from this worst, this greatest evil. All others we can resist and overcome; encroachments on individual or State rights cannot, under our representative government, be long or oppressively persevered in. There are legitimate and effectual means to correct any palpable infraction of our Constitution. Try them all before recourse is had to the menace of this worst of evils. But when an honest difference of construction exists, surely such extreme means or arguments ought not to be resorted to. Let the cry of unconstitutional oppression be justly raised within these walls, and it will be heard abroad,—it will be examined; the people are

intelligent, the people are just, and in time these characteristics must have an effect on their Representatives. But let the cry of danger to the Union be heard, and it will be echoed from the White to the Rocky Mountains; every patriotic heart will beat high with indignation; every hand will draw a sword in its defence. Let the partisans on either side of this argument be assured that the people will not submit to consolidation, nor suffer disunion; and that their good sense will detect the fallacy of arguments which lead to either.

"Sir, I have done. I have uttered the sincere dictates of my best judgment, on topics closely connected with our dearest interest. I have, because it was my duty, uttered them freely,—without reserve, but I hope without offence; with the respect that was due to the opinion of others, and with a becoming diffidence of my own. It would be a cause of great regret if I should have misapprehended the tendency of any of the doctrines of which I have spoken. It would have been a greater, if, thinking of them as I do, I had omitted the animadversions which I thought their consequences required.

"Gentlemen have spoken, with patriotic enthusiasm, of the consolation they would receive, at their last moments, in seeing the flag of their country display to their dying eyes its emblems of union and glory. The period when mine must be closed in night is too near to refer to it the duration of my country's happiness. But I can anticipate for that beloved country a continuance of freedom and prosperity long after the distant, I hope the far distant day, when the last of those honorable men shall have finished his useful career. I can apprehend for it the worst of evils before any one of them shall quit the stage. These hopes are founded on the exertions of active and enlightened patriotism to preserve

the Union; these fears, on the madness of party that may destroy it."

It was during Mr. Livingston's senatorial term, and in the Congressional vacations, that some correspondence, with an exchange of their respective works, occurred between him and Jeremy Bentham. A portion of the correspondence has appeared in the valuable edition of Bentham's works published by his executor, Bowring. Some passages from Livingston's part of it have already been quoted or referred to in this volume. The following is the close of one of Bentham's letters, — of which the first part is printed by Bowring, — dated February 23, 1830, and the original of which is now lying before me, written upon thick paper of the foolscap size, with wide margins ruled off, spread over fourteen pages, in which the venerable writer appears to have had the assistance of both his secretaries, though winding it up with his own hand: —

"What shall we say of these scholars of the school called the Historical? To find a parallel for them, we must suppose the scene to lie in a private family. Problem to be solved, what shall be served up for dinner. Instead of saying to the cook, Give us a rump of beef to-day, with a plum-pudding, says the mistress to her, Look back to the housekeeping-book, as many years of it as you can find, as likewise to the housekeeping-books of our next-door neighbors to the right and left, as many of them as you can get a sight of; this done, it will be your business to guess, not mine to tell you, what it is I wish to have for dinner.

"Not that the cook would have any great objection to this substitute for a command, if her wages were to go on increasing in proportion to the number of housekeep-

ing-books in which the search was made, and the length of time occupied in making it; and here, too, let any one say whether the parallel does not hold good? How opposite soever to common sense, would not this be altogether apposite to common law?

"I am, Sir, with the
"sincerest respect, yours,
"JEREMY BENTHAM.

"TO EDWARD LIVINGSTON,
"Senator from Louisiana.

"I hope this copy contains no material errors. The original scrawl would have been illegible. Neither time nor eyes admit of revision."

Mr. Livingston continued to discharge assiduously the ordinary duties of a senator, till the close of the second session in March, 1831. On the second of that month, the bill for the relief of James Monroe being under discussion, he repeated the substance of what he had said on the same bill while a member of the House, by way of protest against the claim put forth, on behalf of the ex-President, for the merit of services in the purchase of Louisiana which had really been rendered by Mr. Livingston's late brother.

But a task that still occupied the best part of his thoughts and labor was the adaptation of his system of penal law to the wants of the Federal Government, with a view to its adoption by Congress. At the first session after he entered the Senate he brought in a bill with that object, and gave notice that he would press the subject upon the attention of Congress at the next session. Accordingly, on the 3d of March, 1831, he moved for leave to bring in his bill, which was granted. The code thus proposed was the same in substance as

that prepared for Louisiana, with such modifications as the peculiar structure of the General Government rendered necessary. In introducing the system, he asked the particular attention of senators to two of its features, — provisions for defining and punishing, by positive law, offences against the law of nations; and the total abolition of the penalty of death, — "in order that they might be prepared to meet the discussion which he should think it a duty to invite at the next session."

The work was printed by the Senate, for further consideration; but at the coming session the author had ceased to be a senator, and the subject has not been again taken up by Congress.

Whilst Livingston was a member of the Senate, it was clearly proved, in more than one instance, that, closely and long identified by personal and political relations as he and Jackson, in general, had been, neither of them was capable of being blindly led by the other, in matters of principle or of conduct. When, in May, 1830, the President vetoed the Maysville Road bill and the Washington Turnpike bill, under the conviction, sharply expressed, of the unconstitutionality of those measures, their reconsideration by Congress took place. The last-named of these bills having originated in the Senate, the vetoing message was addressed to that body. We have already seen that Livingston earnestly believed this class of measures to be consistent with the Constitution, and he had voted for this particular improvement as expedient and wise. He now voted promptly, with the majority, but not two thirds of the Senate, in favor of passing the bill over the President's veto.

And when Jackson desired to reward with an office the friendship and services of the unfortunate Henry Lee,

whose notorious fault was one of the grosser violations of the code of domestic morals, Livingston — and it is the only act, seeming like one of stern severity, which my attentive study of his career has enabled me to attribute to him — voted against confirming the nomination of the brilliant, but criminal, though perhaps contrite friend of the President.

CHAPTER XVI.

SECRETARY OF STATE.

Montgomery Place — Mr. Livingston's Retirement for the Congressional Vacation of 1831 — A Summons to Washington — Dissolution of the Cabinet — The Secretaryship of State pressed upon Mr. Livingston — Letter to his Wife — Acceptance of the Office — His Views of the Position — Letters — Foreign Transactions of the Government — Personal Characteristics of the Secretary of State — Anecdotes — Character and Influence of Mrs. Livingston — Proceedings in the Senate on the Confirmation of the Cabinet — Dignified Course of Mr. Livingston on that Occasion — Independent Conduct in Office — Course on the President's Bank Policy — Nullification — Draught of the Proclamation of December 10, 1832 — Notes from the President to Mr. Livingston — Amendment of a Single Paragraph — The Growth of Mr. Livingston's Reputation abroad — Election to the Institute of France — The French Mission — Letter from Lafayette — Marriage of Mr. Livingston's Daughter — His Appointment as Minister to France — De Tocqueville.

IN 1828, Mr. Livingston's eldest sister, the venerated Janet Montgomery, had died, bequeathing to him the bulk of her fortune, including her home, Montgomery Place. Childless herself, she had looked upon her nephew Lewis as an adopted son, and had expected to make him her heir. His sad early death had diverted the bequest to his father.

Montgomery Place is an estate of about three hundred acres, on the east bank of the Hudson, in the County of Dutchess. It is entered only — from a road parallel to and about a mile distant from the river — by a wide avenue, bordered with ancient trees, and winding over variedly sloping grounds, amongst a plentiful, half native, half exotic shrubbery. The house, which Mrs. Mont-

gomery erected about the beginning of the present century, is a large and plain mansion, overlooking, from the summit of a broad, high, and undulating lawn, the river, which there appears like a lake with islands and irregular bays, and in distinct view of the whole range of the Catskill Mountains. The northern and southern borders of the estate, together with the river-bank, here high and precipitous, are covered with their native forests. The northern boundary is a considerable stream, which rushes to the river over two precipices, of twenty and forty feet, and forms, in the woods of Montgomery Place, by an overflow between these falls, a beautiful lake and peninsula. The forest on this side is uneven and hilly, and is laid out in a labyrinth of foot-walks, with a variety of bridges and summer-houses. The wood of the southern side is devoted to the purpose of a private driving-ground. A carriage there passes, over a constantly changing road, two miles in extent, through lawn, opening, ravine, and thicket, obtaining here and there a glimpse of the river or of the mountains.

To this retreat, but a few miles from his birthplace, — itself a memorial of affection and hallowed by many associations, — Livingston retired in March, 1831, to be soon joined by his family, with a prospect of unaccustomed repose, to last until the opening of the next session, in December. I must now relate how suddenly and how soon this prospect was interrupted.

Shortly after the 9th of April, whilst he was busy in the culture of trees, shrubs, and flowers, he received from the Secretary of State the following letter: —

["Strictly Confidential.]

"My Dear Sir: We wish to see you here at the earliest practicable moment, on an affair of deep interest.

The President will be obliged if you will start the day after you receive this, under circumstances which will serve to avoid speculation by preventing its being known that your destination is Washington. That may probably be best done by giving out that you are going to Philadelphia.

"The President desires me to say to you, that he will test your adaptation for the service that may be required of you by the secrecy and despatch of your movements on this occasion.

"Lest you may have left town, I send a copy of this letter to our friend Bowne, who knows only that he is to see that you get it, and that he is to say nothing about it, an injunction which he will be sure to observe. Make my best respects to the ladies, and believe me to be,

"Very truly yours,

"M. Van Buren.

"E. Livingston, Esq.

"*Washington*, April 9, 1831."

He obeyed the summons, observing the secrecy and haste enjoined, and amusing his very intimate friend, George M. Dallas, whom on his way he met at Philadelphia, with a glowing account of some rose-buds which he was watching at home. Why he had been sent for he could form no probable surmise, till, on his arrival at Washington, he was told by the President and Secretary. The well-known dissolution of Jackson's first Cabinet was about to be precipitated, and Livingston was wanted to succeed the Secretary of State. This was an exigency which he would have been glad to have avoided, but which, after it had arisen, could not be lightly considered or acted upon. He immediately wrote the following letter to his wife: —

"*Washington*, Saturday night.

"Guess until you are tired, my dear Louise, and you will not hit on the cause of my summons to this place. An offer is made to me of a place that would be the object of the highest ambition to every politician, — it is pressed upon me with all the warmth of friendship, and every appeal to my love of country. Yet it makes me melancholy, and, though I have not refused, I have not accepted. In short, to keep you no longer in suspense, I am offered the first place in an entire new Cabinet, with the exception of the P. M. G. V. B. has taken the high and popular ground, that, being a candidate for the Presidency, he ought not to remain in the Cabinet, when all the measures will be attributed to intrigue, and made to bear upon the President. He has, therefore, prevailed on the President to accept his resignation. I have, in an interview I have just had, requested time for consideration. The suddenness of the offer, my private arrangements, and, as a conclusive argument, the state of your health, which might, perhaps, oblige me to make a voyage. This last was answered ingeniously enough. Davezac should have leave to meet you at any port to which you might sail, and conduct you to Paris. At last, it was put on the footing that I should have as much time for deliberation as the present incumbent would consent to remain in office, but with a smart slap on the knee, 'My friend Livingston, you must accept.' And so we parted. I shall make no promise until we meet. The selection I think, except the first place, a good one. E. L., Sec'y of State; H. L. White, War; McLane, Treasury; Woodbury, Navy; Att'y-Gen'l, not decided as yet. All this is a profound secret, not even communicated to C——g. Therefore, give not the slightest hint, even to him. In addition to the reluctance to give

up my independence, I have serious doubts of my ability to fill the office with credit. I know nothing of the details; the political intrigues would worry me; in short, I am perplexed. I must remain here, I think, until Tuesday.

"In this, as in everything else, my dear wife, your happiness and that of my daughter shall be my first consideration. You may write to me in general terms, and direct to Head's at Philadelphia, for I shall be uneasy until I hear that this letter has been read and destroyed.

"I embrace you tenderly and affectionately.

"E. L."

After returning home, he promptly decided on yielding to the President's wishes. He arrived at Washington on the 5th of May, and on the 24th entered upon his new office. The interval he passed at the department, in a laborious perusal of the late transactions of the principal missions.

There was no affectation in the distrust which he expressed of his own qualifications for his new duties, nor in the misgiving with which they were undertaken. In a letter to Governor Roman, of Louisiana, resigning the senatorial office, he declared, that, in exchanging a situation which he had always thought more independent than any in the government, for one of greater labor, more responsibility, and greater exposure to obloquy and misrepresentation, he had neither consulted his interest nor ease, and still less his ambition, which was before perfectly satisfied; but that he yielded to the wishes of those who, forming, he feared, a too favorable opinion of his powers, thought he could be more useful to the nation in the station to which he had been called. In

the confidence of private friendship, he wrote to Mr. Dallas, — "I assure you, confidentially, I every day experience a greater regret that I could not have declined; but now, *le vin est tiré*, and, whether the draught be bitter or sweet, *il faut le boire*. At any rate, I promise you, it will not intoxicate me." To his brother-in-law, General Armstrong, he wrote: —

"I do not wonder at your hesitation whether to congratulate me or not. The same feeling made me reluctant to accept the place. I preferred the seat in the Senate. I was aware of the labor, the exposure to abuse, and the small opportunity of gaining any distinction, that I might expect in the Department of State. Yet such appeals were made to my feelings that I thought it a duty to yield. Very few will believe this; and therefore I do not generally take the trouble to make the explanation, and am content to appear as one of the many to whom the place is an object of high ambition."

In a letter to Judge Carleton, dated the day of his induction into office, referring to his appointment, he said: —

"You congratulate me upon it, as it is natural you should; but I assure you, it was with great reluctance I agreed to accept the place. The labor I do not mind; but the renewal of all the abuse that party editors think it a part of their duty to rake up, the obligation to leave the delightful retreat in which I was grafting my trees, and watching the first swelling of the buds, when I received the summons to Washington, are but ill repaid by any credit I can hope to obtain by the faithful execution of the duties of my place, in which the occasions of attracting the public attention are very rare. I had also just begun to be at ease in my senatorial chair, and learned to consider it as the most dignified and independent situation in the country."

The following passage from a letter to his wife, written after he had been a month in office, has the unmistakable sound of audible thinking: —

"Here I am in the second place in the United States, — some say the first; in the place filled by Jefferson and Madison and Monroe, and by him who filled it before any of them, — my brother;* in the place gained by Clay at so great a sacrifice; in the very easy-chair of Adams; in the office which every politician looks to as the last step but one in the ladder of his ambition; in the very cell where the great magician, they say, brewed his spells. Here I am without an effort, uncontrolled by any engagements, unfettered by any promise to party or to man; here I am! and here I have been for a month. I now know what it is; am I happier than I was? The question is not easily answered. Had the bait never been thrown in my way; had I been suffered to finish the graft I had begun when your letter summoned me from the country; had I been permitted to stay and watch its growth until the fall, to wander all the summer through the walks you had planned, to see my daughter improving in health and spirits, now and then to plan a picnic, or plague myself in the vain attempt to catch a trout, to have exclaimed, on hearing of what happened here, 'Among them be it!' and taken the opinions of my two heads of departments, Shoemaker on the crop of wheat, and Owen on the celery-bed, — could I have passed my summer thus, and taken my independent seat in the Senate during the winter, I could then have answered the question readily. But the temptation was thrown in my way; the prize for which so many were contending was offered to me; the acceptance of it was urged upon me; if I had rejected

* The Chancellor, who was Secretary of Foreign Affairs, during the Revolution, from 1781 to 1783.

it, I think it would have been a source of regret that would have made me undervalue the real enjoyments for which I refused it, — such is human nature. But, as yet, I cannot form a proper judgment of the value of my place, — my wife and daughter have not been with me, and if the mental exercise and laborious attention it requires have enabled me to bear the solitude I am in, they will turn to positive enjoyment when you are with me; for I now see that I can master the difficulties of the office, and although they will be increased during the session, if my health is preserved, I shall not fear them.

"All this we have thought and said a hundred times; why I repeat it I cannot tell, except that, running in my mind, it flowed from my pen, as all my other thoughts do when I write to you."

Mr. Livingston, now in the sixty-eighth year of his age, was thus committed to cares and labors very different from the occupation of watching the growth of buds at Montgomery Place. The reader will hardly need to be told that the many state papers which now came from his pen were models of style and of political wisdom. In a letter to a young relative, written at this period, he said: "I work harder and walk farther and faster than any man in the administration; and by bathing in cold water every morning, I keep up my spirits and my health. Come and see how rosy it makes me."

It was, indeed, for the director of the government's foreign relations, a busy, though not a perplexing year. Among its more important transactions was the signing, by Mr. Rives, of a treaty with the French government, by which France undertook to pay, in six annual instalments, the sum of twenty-five million francs, in satisfaction of the long-standing claim of the United States on behalf of

their citizens, for the spoliations suffered under the Berlin and Milan decrees.

An acquaintance of the writer, W. Coventry H. Waddell, Esquire, of New York, occupied at this period a confidential position in the Department of State. "Long devoted," says the latter, "both politically and personally, to Mr. Van Buren, he could not have thought of asking me to do anything which I would not have done with alacrity. Always kind, considerate, and true, there was still in his nature a certain fence of reserve which I felt that no one could pass. But when Mr. Livingston came, a stranger to me, I soon found that his heart was open as the day, large, sympathetic, and unsuspicious." This gentleman describes the new Secretary's manner, when occupied in official labor, as one of intense abstraction. Walking up and down his room, his hands behind him, his shoulders stooping, and his eyes fixed forward and downward, the going and coming of his subordinate seemed unheeded. It was a common thing for the latter to withdraw a document from under the very paper on which the Secretary was writing, without his appearing conscious even that any person was present. Sometimes on leaving the department for the day, when an important subject occupied his mind, Livingston would retain all the way on the street the stooping gait and abstracted look just described, and would not see a single person, though he might pass many acquaintances.

The same gentleman once had occasion to call on Mr. Livingston at his house, in the afternoon of a day when the latter had not appeared at the department since morning. He found Mrs. Livingston ready to drive out and waiting for her husband, who soon came in.

"Where is the carriage, my dear?" inquired the lady.

"I don't know, I am sure," was the answer.

"Why, you went out in it, did you not?" she asked again.

"Did I, my dear?" said he, reflecting; "then I must have come out by the western door."

In fact, he had gone to the capitol in his carriage, which he had left at the eastern entrance; had become interested in a debate, and remained most of the day; had then passed out by the western steps, and walked home, while his coachman, patiently or otherwise, was still looking in vain for his appearance. An explosion of laughter followed his detection in this flagrant abstraction.

But absence, or even concentration of mind, was far from being his constant state. His duties, though performed with his habitual industry and care, were for him a rather easy burden. His native gayety still enlivened his conversation and gleamed in his private correspondence; a good pun would put him in the highest glee. His friend Dallas, in the same letter in which he had used a play upon a word that greatly amused the Secretary, inquired, with serious concern, if a rumor which he had heard, to the effect that one of his political friends was to be turned out of office, was true. To this question Livingston replied: —

"There is no intention, that I know of, to displace Mr. Shoemaker. It is the last thing I should think of. The story is vamped up to give uneasiness to his friends, and, were there no other, he should be retained for the sole reason that you desire it. Those who have raised the report deserved to be strapped. And I too am a punster; *et ego in Arcadia;* and I too have been in Philadelphia."

Punning was a feature in Livingston's conversation, all his life; though as to the quality of his attempts of this kind he was never very nice or vain. He used to declare that the only good pun he had ever produced was while he was asleep. He had dreamed that he was present in a crowded church, at the ceremony of the taking of the veil

by a nun. The novice's name was announced as Mary Fish. The question was then put, who should be her patron saint. "I woke myself," said Livingston, "by exclaiming, 'Why, St. Poly Carp, to be sure!'"

Yet he was never wanting in the highest, because the simplest dignity. He was always dressed in public with care and a strict regard to the proprieties of his age and position, and no figure could be more respectable than that which he habitually presented, with his tall form, slightly bent at the shoulders, his plain dark clothes, his white cravat, his carefully shaven face, his peaceful dark eyes, his bold forehead, and his thin black hair, scarcely touched with gray. His manner of living and of entertaining guests was not excelled in elegance, if equalled, at Washington. In this his wife saved him all manner of exertion. No woman could be better qualified to preside in such a house than she. Having possessed striking beauty while young, and still retaining very remarkable dignity and grace, her mind was as extraordinary as her manners and person. Unacquainted with the English language before her marriage to Mr. Livingston, she had learned it mainly out of the English classics, and, though she always continued to speak it with a marked accent, had acquired a complete mastery of diction, drawn from that

"Well of English undefyled,"

preferring that language, as she declared, for all purposes of earnest expression over her mother-tongue. Her face, figure, and manners were entirely feminine; yet she bore a sway as complete as it was gentle in the whole circle of her acquaintance. She took upon herself the management of all household business, and was, at the same time, her husband's most trusted counsellor at every important step, in politics or in life. He even habitually sought her opinion upon what he wrote relating to his system of

penal law. Her office in listening to these productions she wittily compared to that of the servant-maid upon whom Molière tried the effect of his comedies before submitting them to the judgment of the world.

The affectionate and ever growing confidence with which Livingston was accustomed to seek the counsel of his wife, so well shown in two letters already transcribed in the present chapter, may be further illustrated by extracts from others of his letters to her which I have seen. In one of these, dated soon after he was first returned to Congress from Louisiana, this passage occurs: "Could you for a moment doubt, my best friend, that your desire would be decisive with me, in producing exertions that no other motive would induce me to make? I well know and have always duly appreciated the motive upon which all your wishes with respect to my conduct were founded; and knowing this so well, much happier would it have been, had I always followed them. On this occasion, although I am more than ever convinced of the justice of your views, I sometimes feel less confidence than perhaps I ought of the result; but your judgment, on which I implicitly rely, encourages and perhaps will make me what you think I may and ought to be." And in another, enclosing the draught of a communication to the Emperor of Russia, to which the response has been given at a former page, he wrote: "Why are you not with me? I want your society always, but now I want your counsel; indeed, I want that always, too, for in cases where I doubt before I decide, I am never quite sure that my decision is right until you have approved it. The immediate occasion of this reflection is the enclosed draft; tell me whether you like it, and, if you do, whether I had not better send it in French; and if you think so, I beg you to send me a translation."

The breaking up of the old cabinet having taken place during the vacation of Congress, the nominations to the new one came up for confirmation or rejection in the Senate on its meeting in December. The opposition, under the leadership of Clay, was disposed to use any plausible pretext for refusing to confirm the nomination by the President of his peculiar friends, — a disposition easily gratified, as the members of the opposition were a clear majority. The rejection of Mr. Van Buren as Minister to England, as well as its political consequences to him and to his enemies, is well known. The new cabinet officers were all eventually confirmed, but not without hesitation and delay. Mr. Clay moved a scrutiny into the circumstances of the recent settlement of accounts between the United States and Mr. Livingston. A very free, informal examination of those circumstances followed. George M. Dallas, then a new and youthful senator from Pennsylvania, supported the nomination with great dignity, and made a careful and thorough statement to the Senate, in secret session, upon the strength of an investigation made by himself, and upon the authority of his deceased father, Alexander James Dallas,* — a name respected by every senator, — of the circumstances under which the claim of the Government against Livingston had arisen, and of his conduct in acknowledging the debt, and in struggling to pay it. Mr. Clay then withdrew his motion, declaring himself quite satisfied; † and Mr. Livingston's confirmation, as Secretary of State, was unanimous. The public opinion of the

* The elder Dallas had been an intimate acquaintance of Mr. Livingston at the period of his misfortune, and had become Secretary of the Treasury a few years later.

† Yet afterwards, when Livingston had been four years in his grave, Mr. Clay, in the course of a political harangue, could mention his name as that of a common defaulter, and even couple it with the names of some of the most notorious of unfaithful public servants.

country, to which the achievements and misfortunes of the latter were known, had already signally and without audible dissent approved the appointment.

The course of Livingston on this occasion was very characteristic, and not at all like that which an ordinary statesman, not to say politician, would be expected, in the same position, to pursue. Though well aware that the investigation was going on in the Senate, he took no step to supply his friends with the facts upon which they should rely in his support, and did not even mention the subject beforehand to Senator Dallas, who he knew would, if necessary, be one of the most zealous of his defenders. He chose, so far as his own action went, to let his character stand alone, and his conduct speak for itself.

The judicial independence of Mr. Livingston in the conduct of his office, as well as the peremptory suavity with which he knew how to exercise it, are well shown in the following answer to an application for place, made, on behalf of a person of doubtful qualifications, by a member of his party who was at the same time an incoming senator and a personal friend: —

"Until I saw your *protégé*, Mr. ——, I might have been inclined to recommend him for a consulate; but really his appearance is not fitted for public life. Imagine him in a consular uniform, marching with his sword dragging on the pavement, to a national entertainment. He is a good poet, you say, and novelist. I will certainly believe it; but this last title to celebrity has convinced him, most unfortunately, that every man who can write a good novel must be also a diplomatist. The consulate given to Cooper, and the secretaryship to Irving, are the colors in Westminster Hall to him; they will not let him sleep. '*Tu Dieu! que tu es âpre à la curée, Sei-*

gneur Gil Blas,' I was tempted to say to him twenty times. He wanted new consulates created, old incumbents removed, and I believe, if I had given him the least encouragement, would have asked to be a minister, or *chargé d'affaires*, at least. Pray try and dissuade him from this pursuit, in which success would only make him uncomfortable. I did everything I could to make him understand that his chance was a bad one, and that his literary merit would be obscured by mercantile associations into which he would be led by a consulship; but I fear without success."

The Secretary observed the subsequent course of this disappointed aspirant after consular honors, and, a few months later, wrote again to his friend: —

"I see that your *protégé* is at the head of the converts to anti-Jacksonism. What a pity we did not make him a consul! His recantation will be literally a palinodea, and be given in rhyme."

The following letter, copied from the draught in his handwriting, exhibits Livingston's hearty contempt for the mean arts of political partisanship, and comes nearer expressing the common sentiment of indignation than almost any other passage that I have noticed from his pen: —

"*Washington*, January 8, 1832.

"SIR: I have just received your letter of the 30th December, by which you inquire 'whether my department affords any evidence that, while Mr. Clay was a Minister in England, he received the usual royal present of £1200 in silver plate.' There is nothing, Sir, to show this in my department, nor have I ever heard the suggestion, or believe there is the slightest foundation for it.

"Under this conviction, I cannot make or direct any

inquiries which would show an injurious suspicion that I do not entertain. I am politically opposed to Mr. Clay, but I am persuaded he would never have done anything that could justify the imputation; and if such a report is current, I should be sorry that even my silence should keep it alive. I am persuaded, Sir, that you agree with me in thinking that any political advantage, however great, would be bought too dear, if obtained by countenancing such calumnies on our opponents.

"I am your obedient servant,

"EDW. LIVINGSTON.

"H. MARSHALL, Esq."

Mr. Livingston appears not to have been specially identified with the President's policy in the veto of the United States Bank, though yielding to that policy a temperate approval. The latest and principal biographer of Jackson intimates his impression that the message vetoing the bill for rechartering the institution was drawn by Livingston.* This is an error. The following passage of a letter written by him to Mr. Dallas, under date of August 26, 1832, not only contradicts the contemporary rumor to that effect, but betrays a real sensitiveness to the supposition: —

"The veto, I find, is well received. The measure could not have been avoided; the managers of the bank drew it on themselves, and they were forwarded by those who thought the institution necessary, and who feared, what has come to pass, that the pressure of the question would endanger it in any shape. As to the message, I will say no more of it than that no part of it is mine. This is a great piece of self-denial, considering the extravagant applause with which it has been received;

* Parton, *Life of Jackson*, vol. iii. page 409.

but I prefer my own plain feathers to those of any peacock, and I therefore to *you* disavow any participation in framing this splendid production, which has received the title of the second declaration of independence; but, wonderful as the production is, I am astonished (since the most perfect composition, and the best arguments are frequently assailed)—I am astonished, I say, that this has escaped so well. There are arguments in it that an ingenious critic might plausibly expose, and I am glad that it has only been nibbled at by the editors. Is this concert? Or what can be the reason of this forbearance? I dreaded an immediate attack. Our friends have lost no time in taking off its force, by anticipating the public opinion."

Toward the end of the same year, General Jackson was busy with the nullifiers of South Carolina. He now relied upon the pen that had served him oftenest and best. Among the private papers which the writer has examined in the course of preparing this volume, is the original draught of the celebrated proclamation of the 10th of December, 1832, entirely in Livingston's handwriting, much amended by erasures and interlineations, according to his invariable habit in all but epistolary compositions. During the progress of the task, he received from the President the two following notes:—

"For the Conclusion of the Proclamation.

"Seduced as you have been, my fellow-countrymen, by the delusive theories and misrepresentations of ambitious, deluded, and designing men, I call upon you in the language of truth, and with the feelings of a father, to retrace your steps. As you value liberty and the blessings of peace, blot out from the page of your history a record so fatal to their security as this ordinance will become,

if it be obeyed. Rally again under the banners of the Union whose obligations you, in common with all your countrymen, have, with an appeal to Heaven, sworn to support, and which must be indissoluble as long as we are capable of enjoying freedom.

"Recollect that the first act of resistance to the laws which have been denounced as void by those who abuse your confidence and falsify your hopes in treason, subjects you to all the pains and penalties that are provided for the highest offence against your country. Can the descendants of the Rutledges, the Pinckneys, the Richardsons, the Middletons, the Sumpters, the Marions, the Pickens, the Bratons, the Taylors, the Haynes, the Gadsdens, the Winns, the Hills, the Henshaws, and the Crawfords, with the descendants of thousands more of the patriots of the Revolution, that might be named, consent to become traitors? Forbid it, Heaven!

"DEAR SIR: I submit the above as the conclusion of the proclamation, for your amendment and revision. Let it receive your best flight of eloquence, to strike to the heart and speak to the feelings of my deluded countrymen of South Carolina. The Union must be preserved without blood, if this be possible; but it must be preserved at all hazards and at any price.

"Yours with high regard,

"ANDREW JACKSON.

"E. LIVINGSTON, Esq.

"Dec. 4, 1832. 11 o'clock P. M."

"Friday, at night, Dec. 7th.

"MY DEAR SIR: Major Donelson, having finished copying the sheets handed by you about 4 o'clock P. M. to-day, is waiting for the balance. Such as are ready, please send, sealed, by the bearer. The message having been

made public on the 4th, it is desirable, whilst it is drawing the attention of the people in South Carolina, that their minds should be drawn to their *real situation*, before their leaders can, by false theories, delude them again. Therefore it is to prevent blood from being shed and positive treason committed, that I wish to draw the attention of the people of South Carolina to their danger, that no blame can attach to me by being silent. From these reasons you can judge of my anxiety to have this to follow the message.

"Yours respectfully,

"ANDREW JACKSON.

"E. LIVINGSTON, Esq.,
"Secretary of State."

The sentences above proposed as hints for the conclusion of the proclamation were, I think, the only suggestion made in writing by General Jackson in relation to the form of this celebrated state paper, though he did not fail orally and repeatedly to impress upon Mr. Livingston his own views of the subject, in characteristically concise and emphatic terms. The few phrases conceived by the President were not used by the Secretary. The thoughts they embody appear here and there in the following closing paragraphs of the proclamation: —

"Fellow-citizens of my native State, let me not only admonish you, as the first magistrate of our common country, not to incur the penalty of its laws, but use the influence that a father would over his children whom he saw rushing to certain ruin. In that paternal language, with that paternal feeling, let me tell you, my countrymen, that you are deluded by men who are either deceived themselves or wish to deceive you. Mark under what pretences you have been led on to the brink of insurrection and treason, on which you stand! First, a diminu-

tion of the value of your staple commodity, lowered by over-production in other quarters, and the consequent diminution in the value of your lands, were the sole effect of the tariff laws.

"The effect of those laws was confessedly injurious; but the evil was greatly exaggerated by the unfounded theory you were taught to believe, that its burdens were in proportion to your exports, not to your consumption of imported articles. Your pride was roused by the assertion that a submission to those laws was a state of vassalage, and that resistance to them was equal, in patriotic merit, to the oppositions our fathers offered to the oppressive laws of Great Britain. You were told that this opposition might be peaceably, might be constitutionally made; that you might enjoy all the advantages of the Union, and bear none of its burdens. Eloquent appeals to your passions, to your State pride, to your native courage, to your sense of real injury, were used to prepare you for the period when the mask, which concealed the hideous features of disunion, should be taken off. It fell, and you were made to look with complacency on objects which, not long since, you would have regarded with horror. Look back to the arts which have brought you to this state; look forward to the consequences to which it must inevitably lead! Look back to what was first told you as an inducement to enter into this dangerous course. The great political truth was repeated to you, that you had the revolutionary right of resisting all laws that were palpably unconstitutional and intolerably oppressive; it was added that the right to nullify a law rested on the same principle, but that it was a peaceable remedy! This character which was given to it made you receive, with too much confidence, the assertions that were made of the unconstitutionality of the law and its oppressive effects.

Mark, my fellow-citizens, that, by the admission of your leaders, the unconstitutionality must be *palpable*, or it will not justify either resistance or nullification! What is the meaning of the word *palpable* in the sense in which it is here used? That which is apparent to every one; that which no man of ordinary intellect will fail to perceive. Is the unconstitutionality of these laws of that description? Let those among your leaders who once approved and advocated the principle of productive duties answer the question; and let them choose whether they will be considered as incapable, then, of perceiving that which must have been apparent to every man of common understanding, or as imposing upon your confidence and endeavoring to mislead you now. In either case, they are unsafe guides in the perilous path they urge you to tread. Ponder well on this circumstance, and you will know how to appreciate the exaggerated language they address to you. They are not champions of liberty, emulating the fame of our Revolutionary fathers; nor are you an oppressed people, contending, as they repeat to you, against worse than colonial vassalage.

"You are free members of a flourishing and happy Union. There is no settled design to oppress you. You have indeed felt the unequal operation of laws which may have been unwisely, not unconstitutionally passed; but that inequality must necessarily be removed. At the very moment when you were madly urged on to the unfortunate course you have begun, a change in public opinion had commenced. The nearly approaching payment of the public debt, and the consequent necessity of a diminution of duties, had already produced a considerable reduction, and that, too, on some articles of general consumption in your State. The importance of this change was underrated, and you were authoritatively told that no further

alleviation of your burdens was to be expected, at the very time when the condition of the country imperiously demanded such a modification of the duties as should reduce them to a just and equitable scale. But, as if apprehensive of the effect of this change in allaying your discontents, you were precipitated into the fearful state in which you now find yourselves.

"I have urged you to look back to the means that were used to hurry you on to the position you have now assumed, and forward to the consequences it will produce. Something more is necessary. Contemplate the condition of that country of which you still form an important part. Consider its government, uniting in one bond of common interest and general protection so many different States, — giving to all their inhabitants the proud title of American citizens, protecting their commerce, securing their literature and their arts, facilitating their intercommunication, defending their frontiers, and making their name respected in the remotest parts of the earth. Consider the extent of its territory; its increasing and happy population; its advance in arts, which render life agreeable; and the sciences, which elevate the mind! See education spreading the lights of religion, morality, and general information into every cottage in this wide extent of our Territories and States! Behold it as the asylum where the wretched and the oppressed find a refuge and support! Look on this picture of happiness and honor, and say, WE, TOO, ARE CITIZENS OF AMERICA! Carolina is one of these proud States; her arms have defended, her best blood has cemented, this happy Union! And then add, if you can, without horror and remorse, This happy Union we will dissolve; this picture of peace and prosperity we will deface; this free intercourse we will interrupt; these fertile fields we will deluge with blood; the protection of

that glorious flag we renounce; the very name of Americans we discard. And for what, mistaken men, — for what do you throw away these inestimable blessings? For what would you exchange your share in the advantages and honor of the Union? For the dream of separate independence, — a dream interrupted by bloody conflicts with your neighbors, and a vile dependence on a foreign power. If your leaders could succeed in establishing a separation, what would be your situation? Are you united at home? are you free from the apprehension of civil discord, with all its fearful consequences? Do our neighboring republics, every day suffering some new revolution, or contending with some new insurrection, — do they excite your envy? But the dictates of a high duty oblige me solemnly to announce that you cannot succeed. The laws of the United States must be executed. I have no discretionary power on the subject; my duty is emphatically pronounced in the Constitution. Those who told you that you might peaceably prevent their execution deceived you; they could not have been deceived themselves. They know that a forcible opposition could alone prevent the execution of the laws; and they know that such opposition must be repelled. Their object is disunion: but be not deceived by names; disunion, by armed force, is TREASON. Are you really ready to incur its guilt? If you are, on the heads of the instigators of the act be the dreadful consequences; on their heads be the dishonor, but on yours may fall the punishment. On your unhappy State will inevitably fall all the evils of the conflict you force upon the government of your country. It cannot accede to the mad project of disunion, of which you would be the first victims; its first magistrate cannot, if he would, avoid the performance of his duty. The consequence must be fearful for you, dis-

tressing to your fellow-citizens here, and to the friends of good government throughout the world. Its enemies have beheld our prosperity with a vexation they could not conceal; it was a standing refutation of their slavish doctrines, and they will point to our discord with the triumph of malignant joy. It is yet in your power to disappoint them. There is yet time to show that the descendants of the Pinckneys, the Sumters, the Rutledges, and of the thousand other names which adorn the pages of your Revolutionary history, will not abandon that Union to support which so many of them fought, and bled, and died.

"I adjure you, as you honor their memory, as you love the cause of freedom, to which they dedicated their lives, as you prize the peace of your country, the lives of its best citizens, and your own fair fame, to retrace your steps. Snatch from the archives of your State the disorganizing edict of its convention; bid its members to reassemble, and promulgate the decided expressions of your will to remain in the path which alone can conduct you to safety, prosperity, and honor. Tell them, that, compared to disunion, all other evils are light, because that brings with it an accumulation of all. Declare that you will never take the field unless the star-spangled banner of your country shall float over you; that you will not be stigmatized when dead, and dishonored and scorned while you live, as the authors of the first attack on the Constitution of your country. Its destroyers you cannot be. You may disturb its peace; you may interrupt the course of its prosperity; you may cloud its reputation for stability: but its tranquillity will be restored; its prosperity will return; and the stain upon its national character will be transferred, and remain an eternal blot on the memory of those who caused the disorder.

"Fellow-citizens of the United States, the threat of

unhallowed disunion, the names of those, once respected, by whom it is uttered, the array of military force to support it, denote the approach of a crisis in our affairs on which the continuance of our unexampled prosperity, our political existence, and perhaps that of all free governments may depend. The conjuncture demanded a free, a full, and explicit enunciation, not only of my intentions, but of my principles of action; and, as the claim was asserted of a right by a State to annul the laws of the Union, and even to secede from it at pleasure, a frank exposition of my opinions in relation to the origin and form of our government, and the construction I give to the instrument by which it was created, seemed to be proper. Having the fullest confidence in the justness of the legal and constitutional opinion of my duties which has been expressed, I rely, with equal confidence, on your undivided support in my determination to execute the laws, to preserve the Union by all constitutional means, to arrest, if possible, by moderate but firm measures, the necessity of a recourse to force, and, if it be the will of Heaven that the recurrence of its primeval curse on man for the shedding of a brother's blood should fall upon our land, that it be not called down by any offensive act on the part of the United States.

"Fellow-citizens, the momentous case is before you. On your undivided support of your government depends the decision of the great question it involves, whether your sacred Union will be preserved, and the blessings it secures to us as one people shall be perpetuated. No one can doubt that the unanimity with which that decision will be expressed will be such as to inspire new confidence in republican institutions, and that the prudence, the wisdom, and the courage which it will bring to their defence will transmit them unimpaired and invigorated to our children.

"May the Great Ruler of nations grant that the signal blessings with which he has favored ours may not, by the madness of party or personal ambition, be disregarded and lost; and may his wise Providence bring those who have produced this crisis to see their folly before they feel the misery of civil strife, and inspire a returning veneration for that Union which, if we may dare to penetrate his designs, he has chosen as the only means of attaining the high destinies to which we may reasonably aspire."

Having read the obviously candid but somewhat vague statement communicated by Major Lewis to Mr. Parton,* to the effect that General Jackson, on examining Mr. Livingston's draught, informed the latter that he had not correctly understood his notes in some particulars, and that certain parts of the paper must be altered, which was accordingly done by the Secretary, I compared the actual proclamation, word for word, with the draught in Livingston's handwriting, in order to see what were the corrections which had been thus suggested. There is no variation between them, except some verbal amendments such as so painstaking a writer would have been sure to make while reading the printer's proof, and except one change, of materiality, in the paragraph next to the last, which, in the draught, reads as follows: —

"My countrymen! the whole of the momentous case is before you. On your concord, on your undivided support, depends the decision of the great question it involves. Public opinion everywhere is powerful; here it is omnipotent. If you should decide — fatally, in my opinion, decide — that a State may annul an act of Congress or recede from the Union, if even any important part of the nation should concur in the Carolina doctrines on this subject, it cannot change my conviction of duty or prevent my at-

* Vide *Life of Jackson*, vol. iii. page 466.

tempts to execute it, though it may render those attempts inefficient. But if, as I trust, only one spirit shall pervade the nation, and that spirit shall inspire a cry from Maine to Louisiana that the Union must be preserved, the voice will be obeyed, the Union *will* be preserved; we shall still be a nation, respected the more for the decision we shall have shown in a time of no common danger. New confidence will be inspired in republican institutions, and we may yet hope to hand them down to our children unimpaired, preserved, invigorated by our prudence, our wisdom, and courage in their defence. Unanimity and a strong, unequivocal expression of it, may avert the evils that threaten us. Madness only could inspire our brethren to persevere in principles which a universal reprobation of the Union should condemn as unsound, and a contest for the support of which they must perceive to be utterly hopeless."

The amendments on the face of the manuscript are all purely philological, and such as Mr. Livingston habitually and constantly made, as has before been stated, in the draughts of all compositions except ordinary letters. The alteration of the above penultimate paragraph I take, then, to be the one and the only one made in this paper, on the suggestion of the President. How such an amendment came to be required, seems almost too obvious to be stated. As to what might be the final issue of the controversy between South Carolina and the Federal Government, as influenced by the possible public opinion of the country, the mind of the Secretary could contemplate and state two opposite hypotheses, while the more dogmatic intellect of the President could neither imagine nor admit but one.

While Livingston was thus performing these highest and most active functions at home, the European reputa-

tion of his criminal code was fast ripening. In the spring of 1833, he was chosen foreign associate of the Institute of France (Academy of Moral and Political Sciences). This distinction, which has always been sparingly conferred, which few Americans have reached, and which even monarchs can only attain through the double merit of genius and industry, he had not sought.

A popular rumor had now assigned the French mission to Mr. Livingston, from month to month, for more than a year;* the government had a most important errand with which to charge him; his personal inclination began to point strongly toward going abroad; and the invitations which he received from Europe were most persuasive. Among the latter was the following letter which I transcribe entire, as the other matters it contains are not without interest: —

"*Paris*, December 8, 1832.

"My Dear Sir: I have been requested by the young Duke of Brunswick to forward the enclosed letter, and transmit your answer wherever the persecutions of which he is the object may at the time oblige him to make his abode.

"That the young man has been rather wild in his dukedom I easily believe; but the coalition of princes against

* The following characteristic passage occurs in a postscript of a letter which, in March 1832, Mr. Livingston received from the celebrated John Randolph, of Roanoke: —

"If General Jackson does not kill the bank, the bank will kill him. Let me conjure you to lay this matter at heart, and accept, not the Chiltern Hundreds, but the mission to France, for which you are better qualified than any man in the United States. In Mrs. Livingston, to whom present my warmest respects, you would have a most able coadjutor. *Dowdies*, dowdies won't do for European courts, — Paris especially. There and at London the character of the Minister's lady is almost as important as his own. It is the very place for her. There she would dazzle and charm; and surely the *salons* of Paris must have far greater attractions for her than the yahoos of Washington. If I had not lost the facility of speaking French by long disuse, I should like it of all things."

him is owing, not to previous errors, but to diplomatic intrigue and the popular sentiments he has manifested. He has been lately expelled from France, agreeably to a wicked alien bill which I have opposed with all my might, and is determined to go to law, by the counsel of Odillon Barrot, Mauguin, and Comte, my colleagues, the latter of whom will plead his cause, in his capacity of an oppressed man. He has entreated my support, which I very readily give him.

"It seems to me the money placed by him in the United States is out of the reach of monarchical juntos or resolves of the Frankfort diet. But my legal knowledge is not so complete as to give him a definitive answer. You are, as Secretary of State and a lawyer, the best oracle to whom he may apply.

"You know, my dear friend, I have made it a point not to intrude upon the authorities within the United States, namely, that of Congress and the Executive, with special applications. I could not, however, circumstanced as the munificence of Congress has made me, forbear to express my feelings in the case of the Rochambeau family and a few remaining officers of the French army. Had I the honor of a seat in either House, I would submit to my colleagues the propriety of doing something in behalf of the application, and even of the very scanty number of men in the same case. But it only belongs to me to impart the sentiments to a confidential friend.

"I refer you to the public papers for an account of transactions and dispositions on this side of the Atlantic. The system of the revolution of July is overpowered at Court and in the Houses by the system called of the 13th March, which amounts to a return to the principles of the charter of 1814, to the benefit of Louis Philippe and an aristocracy, not of birth, but of property and money. Yet

the spirit of '89 and 1830 is living in many hearts, and shall ultimately triumph, not only in France, but throughout Europe. The enclosed short speeches will give you an idea of what passes in Holland and Italy.

"The reëlection of the President will set you at liberty to make a choice between the secretaryship and the French legation; from what you was writing to me some time ago, I think I may cherish the hope to see you here. With what affection and pleasure I hope it is superfluous to say.

"Present my best respects and affectionate sentiments to the President. Remember me most affectionately to family and friends, and believe me what I have been for fifty-five years,

"Your grateful and loving friend,

"LAFAYETTE."

In April, 1833, the daughter and only surviving child of Mr. Livingston was married to Thomas P. Barton, Esquire, of Philadelphia. Immediately after the marriage ceremony, the President, upon offering his congratulations, announced to the latter that Mr. Livingston would soon go to reside in France as Minister, and that he had selected the new member of his family for Secretary of the legation.

It was during the first year of Mr. Livingston's service in the cabinet, that M. de Tocqueville visited the United States, charged with the official errand of practically examining our penitentiary system, — a visit which resulted, as all the world knows, in profound studies of a more general nature. The Secretary of State at once perceived the enlightened genius of the youthful foreigner, entertained him often, opened to him freely the stores of his own information, showered upon him such documents as

he needed, and gave him all possible facilities in the prosecution of his various inquiries.' This service, the latter, upon publishing the work which soon afterwards gave celebrity to his name, acknowledged in a conspicuous and exclusive manner. At the foot of one of his earliest pages, de Tocqueville declares that "among the official persons in America who favored my researches, I should, above all, mention Mr. Edward Livingston, then Secretary of State (now Minister Plenipotentiary at Paris). During my sojourn at the capital, Mr. Livingston had the kindness to cause to be sent me most of the documents which I possess relating to the Federal Government. Mr. Livingston is one of those rare men whom one loves in reading what they have written, whom one admires and honors even before knowing them, and to whom one is happy in owing a debt of gratitude."

CHAPTER XVII.

MINISTER TO FRANCE.

Unsuccessful Attempts by Mr. Livingston to keep a Diary— Extracts— Appointment to the French Mission — Voyage to France — Objects of the Mission—Active Exertions of Mr. Livingston—The Treaty of July 4, 1831 —Failure to fulfil it by the French Government — Efforts of the King, and Opposition by the Chamber of Deputies — A Draft for Money drawn by the Secretary of the Treasury upon the French Minister of Finance—Refusal to pay it by the latter—Failure of the Necessary Appropriation in the Chamber of Deputies — Irritation evinced by President Jackson — Message to Congress — Effect of the Message in France — Offer of Passports to Mr. Livingston — His Refusal to accept them unless ordered to leave by the Government — Elaborate Letter to the Comte de Rigny — Approval of his Course by the President — Conditional Appropriation by the Deputies of the Money due the United States — Mr. Livingston demands Passports — His Parting Address to the Duc de Broglie — His Continued Attention to the Subject of Penal Legislation — Increase of his Reputation as a Publicist — Letters from Villemain and Victor Hugo — His Efforts to promulgate his System — Letter to the Howard Society of New Jersey — Death of Lafayette — Last Letter from the General — Journey through Switzerland and Germany — De Sellon's Monument — Anecdote of Mittermaier — Livingston's Social Traits and Temper — His Correspondence with Public Men — Letter to his Sister — Farewell to Davezac — The Homeward Voyage — Popular Reception at New York — Public Dinners, etc. — Unanimous Approbation in America of Livingston's Conduct of the Mission — Defiant Sentiment of the Nation toward France — Speech of John Quincy Adams — The President's Approval of Livingston's Course.

TWICE during his life Mr. Livingston undertook to keep a diary. He failed each time, after a short trial, — not of course from any lack of methodical industry, but, as I think, for want of that natural egotism, which, when a really great man possesses it, always lends a lively charm to his memoirs.

The first of these attempts was begun on the day of his

arrival at Washington to undertake the Secretaryship of State, and abandoned on the day of his induction into the office. The last entry made by him in this book is,— "May 24. This day received my commission as Secretary of State, and entered on the duties of the office. God grant that I may exercise them to the good of my country!" The other entries are the briefest possible memoranda, and not much more than a record of the dates of his correspondence. From them it appears that he habitually wrote as many as from ten to fifteen letters daily.

The next year he commenced a fresh experiment of the same kind, and with a similar result. His new book opens thus: —

"Better late than never,—March 10, 1832. I bought this book, I am ashamed to say how long ago, for the purpose of keeping a kind of journal of official and private and political business and events, all blended together; but I have never yet found time to begin it. Now I have less leisure than ever; but, as I every day regret that I have not made memorandums of this kind, I will try to execute my purpose."

Some retrospective entries finish the page, after which all that follows, for a period of several months, I transcribe: —

"On the 29th day of May, 1833, I resigned the office of Secretary of State of the United States, which I had held since the 24th May, 1831, and the same day received the appointment of Envoy Extraordinary and Minister Plenipotentiary to France. A few days after this, I received my instructions and left Washington to prepare for my departure. On receiving my resignation, the President addressed me a letter in which he adverts in the most flattering terms to military services with him

in the New Orleans campaign, as well as to my management of the Department of State.

"On the — of July, I met the President at New York, on his way to Boston. He expressed great anxiety for my speedy departure; and, as some delay had occurred in fitting out the Delaware, ship of the line, in which it had been arranged that I should be conveyed to my destination, I determined to take one of the packets from New York, intending to have gone on the 16th; but, some disappointment in my private arrangements having intervened, I wrote to the Secretary of State, saying that it would be impossible for me to get ready before the 24th, (by which day it was confidently asserted that the Delaware would sail from the Chesapeake,) and that I would be ready to go on board as soon as she could come to New York to receive me. I made my preparations accordingly, and arrived in New York a week before the ship came in. She was detained there until the 14th of August; on which day, having taken leave of my relations and friends, I embarked with my family. A salute was fired on my coming on board, and the noble ship spread her sails and stood immediately out to sea. This is the first time I have taken leave of my native land. Whatever favorable anticipations may be formed of a residence abroad as the representative of our country when the period of leaving it is yet at a distance, yet as it approaches they give way to sensations by no means so pleasing. Grief on parting with relatives and friends, whom you may probably never again meet; misgivings of your own ability to manage the important national concerns intrusted to you; apprehensions of leaving undone some matter of importance to yourself or others; and, finally, the feeling that comprehends most of the others, that painful one attending a

separation from your native country for an uncertain period,— these are some of the drawbacks from the satisfaction I should otherwise feel in undertaking the honorable mission that has been assigned to me. Some years before this they would have been but slight deductions from the anticipated pleasure I should have entertained; but I am now sixty-nine years of age, and, although I enjoy uninterrupted health of body, and, as far as I can myself judge, an unimpaired intellect, yet change of scene and an acquaintance with new actors in it have lost much of their charm for me. But, to compensate for this, I go under advantages I should have had at no other period of my life. The station I have filled at home gives me some political importance, and the success of my publications on penal law, which has procured me the unsolicited admission to the French Institute, has given me a literary reputation, certainly beyond my merits, but which must add greatly both to my personal gratification and to the consideration of my country.

"On the 12th September, 1833, we entered the port of Cherbourg, after a most agreeable voyage of twenty-eight days. Fine weather, excellent accommodations, and, above all, the unremitted attentions and agreeable society of Captain Ballard, and the other officers of the Delaware, made us forget that we were at sea. Our arrival was a few days too late for the enjoyment of a scene that would have been quite new to us: the King and royal family had just left this port, where they had been met by the Royal Yacht Club of England, with their beautiful vessels."

Five pages more of brief notes of conversations, dinners, etc., entered at irregular intervals, close this second and last fragment of a diary. He whose industry never

flagged in the pursuit of knowledge, nor in the service of others, — whether his clients, his country, or humanity, — could not persevere in the task, which many find so easy to themselves and make so interesting to others, of recording merely personal incidents and observations.

Livingston enjoyed the general novelty of what he now saw, with all the fresh interest of a young traveller. Paris and the Parisians, the theatres and gardens, the progress of science and art, the government, the army, the people, persons, society, all pass in review in his letters to friends at home. No ardent, youthful American democrat could have found more complete comfort in a comparison of the institutions of France with those of the United States than he did.

There would have been some excuse for him, if, at his time of life, with the growing fame he enjoyed, the novel scenes which surrounded and interested him, and the flattering notice he received from some of the most eminent men and most agreeable societies of Europe, he had satisfied his conscience by a languid attention to the business of his mission. But he entered upon that business and persevered in its discharge, at the sacrifice of his comfort and the risk of his popularity in France, with all the spirit and assiduity of a young diplomatist, whose fortune might depend upon his specific success. I am writing after the perusal of the original draughts of upwards of ninety despatches which he addressed to the Secretary of State at Washington, detailing, from mail to mail, his exertions, his conversations with the King, the Ministers, and members of the Chamber of Deputies, his fears, hopes, and impressions. He had been sent to effect two objects: the payment of the large sum secured by treaty, of which a part was then overdue from the French government to his own, and, that accomplished, the negotiation of a

new treaty readjusting the commercial relations of the two countries.

The claim of the United States for indemnity on account of French spoliations, under the Berlin and Milan decrees, notwithstanding its pretty clear original merits, had become, before its settlement by the treaty of July 4, 1831, — negotiated at Paris by Mr. Rives, — a rather stale demand. Louis Philippe, acquiescing in its justice, had signed that treaty, fixing the indebtedness of his government to that of the United States at the sum of twenty-five million francs, payable, with interest, in six yearly instalments. This was all the King could do. The action of the Chamber of Deputies was required, in order to appropriate the money. Whether such action could be secured at all, and, if so, when would be the most propitious occasion for broaching the subject to the Chamber, were matters of uncertainty and royal anxiety. His Majesty's ministers did not venture to have inserted in the annual budget the amount of the first instalment, when it was about to fall due, notwithstanding that the United States had proceeded, in fulfilment of a provision in the treaty, immediately to modify their tariff by a reduction of duties upon French wines, — a beneficial change which that nation had ever since enjoyed. And so no provision was made for the payment which had been solemnly stipulated for in the treaty, and which became due on the 2d of February, 1833.

The Secretary of the Treasury, Mr. McLane, to whose discretion Congress had by law confided the mode of transacting the business of receiving the money, assuming that the payment would be made, drew, according to a previous notice, a bill of exchange for the amount of the first instalment, dated the 7th of February, addressed to the French Minister of Finance, and sold the

draft, in accordance with the forms of mercantile business, to the Bank of the United States. The bank transferred it to a European holder, who caused it to be presented to the Minister to whom it was directed. The latter declined the payment, stating, as a reason, that no appropriation for the purpose had been made; and the paper was returned, duly protested, to Mr. McLane. This was the immediate occasion for the appointment of Livingston to the French mission, which had been vacant since the return, in 1831, of Mr. Rives, — the intermediate appointment of Mr. Harris as *Chargé d'Affaires* having been intended only as a temporary measure.

After a most flattering reception by the King and royal family, Mr. Livingston proceeded at once to business, and vigorously urged an early and special convocation of the Chambers, in order that a law for the execution of the treaty might be presented. The King would gladly have complied, but a reluctance to meeting the question before the deputies, and perhaps even before a portion of the cabinet, suggested to his mind paramount reasons for delay till the regular session, and, even then, for studying to find a favorable opportunity to broach an unpleasant subject. But strong and constant verbal assurances were given to Mr. Livingston that the King and Cabinet had the subject much at heart, and that the necessary measure would be presented at the coming regular session, and would doubtless be successful.

The King was right in apprehending a formidable resistance in the Chamber of Deputies. All the elements of opposition to the government readily combined to represent the treaty as one which ought not to have been made, and one in which the American government had gained an undue advantage, such as the Chamber was not

bound to carry into effect. All arguments based upon the binding force of the contract seemed to be of no avail, and the expediency of executing it was what even the friends of the measure chiefly relied upon in the discussions to which it gave rise. Livingston watched keenly all that was said by the French journals on the subject, actively canvassed the opinions of members of the Chamber, and, in conversation, furnished various arguments to the friends of the measure to prove its expediency, while, in his official intercourse with the government, he was careful to insist only on the absolute and solemn obligation of the treaty.

The pretext that Mr. Rives had gained an advantage in the negotiation, as to the amount due to the citizens of the United States, was manifestly disingenuous; because the French government, ever since the occurrence of the spoliations, had been in possession of every document necessary to show full particulars of all the trespasses complained of by the United States. These documents were the original ship's papers of the vessels captured, and the *procès verbaux* and records of legal proceedings which indicated exactly the gross and net proceeds of the several cargoes disposed of under the two decrees. Indeed, the government of the United States was completely dependent upon that of France for the precise information revealable by these documents, in order to be able to make an equitable division of the sum to be received among its various claimants; for which reason the production of the documents was, by a distinct article of the treaty, made as binding upon France as was the payment of the money. For French statesmen to say that the Americans had secured an undue advantage in the settlement of the amount to be paid, was, therefore, as unreasonable as for a person, playing at cards, with a full

knowledge of both his adversary's hand and his own, to complain that he was outwitted. Yet there was in the Chamber of Deputies a large body which, though composed of several parties incapable of coalescing in anything but a factious opposition to a feeble government, readily united in insisting loudly that the King had weakly acceded to an exorbitant demand, and that the representatives of the nation ought not to ratify an agreement thus made. The members who took this ground succeeded in placing their country for a time in the false attitude of a reluctant and unscrupulous debtor, looking out for causes of affront which might excuse the refusal or neglect to pay a debt distinctly liquidated after more than twenty years of deliberation and delay.

General Jackson, throughout the affair, evinced much impatience and irritation at the course pursued by the French government. An indiscreet minister, possessing the influence with the President which Livingston enjoyed, would, I think, inevitably have got the two nations embroiled. He succeeded in vindicating signally the rights and dignity of his country, while circumspectly guarding the way to the peaceful solution which followed.

Up to the time of the refusal by the French government to pay the draft of Mr. McLane for the first instalment, the Ministry had not ventured to ask the Chamber of Deputies to make the necessary appropriation, though that body had been for several months in session. Such an application was made a few weeks after the draft had been dishonored; but the Chamber then only found time to read the bill and refer it to a committee. At a later session in the same year another bill for the same object was introduced with a similar result. Not till April, 1834, after Livingston had been for six months in Paris, constantly pressing the subject upon the notice

of the French government, was the definitive action of the Chamber upon the measure obtained; and then its decision, by a majority of eight, was a refusal to make the appropriation.

The King immediately despatched a *corvette* with instructions to his Minister at Washington to make assurances to our government that the new Chamber of Deputies should be called together as soon after the election of its members as the charter would permit; that the *projet de loi* for the fulfilment of the treaty should be laid before them; that all the constitutional powers of the King and the Cabinet should be exerted to carry it; and that the result should be made known early enough to enable the President to communicate it to Congress in the annual message.

Nevertheless, His Majesty did not find it convenient to bring the subject before the new Chamber at its summer session, nor previously to the assembling of Congress,—a delay which gave rise to a more palpable cause of affront to the dignity of the French nation than had existed in the supposed indecorum of drawing a bill of exchange for money which was overdue.* The President, in his annual message of December, 1834, recited the whole history of the affair in very concise and plain terms, and proceeded bluntly to recommend that the United States should take redress into their own hands, and that the Executive might be authorized to make reprisals upon French property, in case no provision should be made for payment of the debt at the then approaching session of the Chamber of Deputies.

* The drawing of the bill of exchange by our Secretary of the Treasury *was* an unusual and indecorous proceeding. There are good reasons why financial transactions between nations should be conducted with other ceremonies than those which are proper among individuals and traders.

News of the contents of the message reached France on the 8th of January, and produced there intense and general excitement, which was heightened by an indiscreet publication on the part of our government about the same time of a portion of Mr. Livingston's confidential despatches, detailing some conversations with and friendly suggestions made by the King. The pride of the nation was now aroused and protested loudly against making any payment under what it chose to regard as a national menace on the part of the United States. The King and his ministers were sorely perplexed. On the 13th of the month, Mr. Livingston received from the Comte de Rigny, Minister of Foreign Affairs, a communication which, after commenting at length and in an acrid tone upon the President's message to Congress, informed him that His Majesty's government was preparing to present a bill for giving sanction to the treaty when the strange message of December 1st came and obliged it again to deliberate on what course it should pursue; that, though deeply wounded by imputations to which the Comte would not give a name, the government did not wish to retreat absolutely from a determination already taken, in a spirit of good faith and justice; that it would still, notwithstanding the difficulties caused by the provocation which President Jackson had given and the irritation it had produced upon the public mind, ask the Chamber of Deputies for the appropriation; but that, at the same time, His Majesty had considered it due to his own dignity no longer to leave his Minister at Washington, exposed to hear language so offensive to France; that M. Serrurier would therefore be ordered home; that the whole of this communication was made in order that Mr. Livingston might take those measures which might seem to be its natural consequences; and that the passports

which Mr. Livingston might desire were, therefore, at his disposition.

On receiving this note, Mr. Livingston's first impression, according with his strong personal inclination, was that he ought to demand his passports and leave France; but, after reflection, he determined to await instructions from the President, and, in the mean time, keep aloof from the King and his ministers. He immediately wrote to the Comte de Rigny, that, if the note of the latter was intended as an intimation of the course which, in the opinion of His Majesty's government, he ought to pursue as the natural result of M. Serrurier's recall, he could take no directions or follow no suggestions but those of his own government which had sent him there to represent it; but if it was intended as a direction that he should quit the French territory, he would comply with it at once, leaving the responsibility where it ought to belong. At the same time, he promised a full answer to the "grave matter" in the body of the minister's note. In taking this course, Livingston submitted to a severe sacrifice of personal feeling, the sense of which he strongly expressed in his despatches and private letters.

The answer which he promised to the body of the Comte de Rigny's note was immediately prepared, and delivered before the end of the month, while he remained without any instructions, and uncertain what the views of the President would be. This paper, produced under circumstances of such difficulty, is a masterpiece of reasoning, of eloquence, and of temper. Referring to the complaints in the Comte de Rigny's note of the terms used by the President in the message, which he informs His Majesty's ministers was not addressed directly to them, he proceeds to make the following point against the fastidious Frenchman:—

"I shall endeavor, by a plain exposition of facts, to repel those charges; I shall examine them with the freedom the occasion requires, but, suppressing the feelings which some parts of your Excellency's letter naturally excite, will, as far as possible, avoid all those topics for recrimination which press upon my mind. The observation I am about to make will not be deemed a departure from this rule, because it is intended to convey information which seems to have been wanted by His Majesty's minister when, on a late occasion, he presented a law to the Chamber of Deputies. It is proper, therefore, to state, that, although the military title of General was gloriously acquired by the present head of the American government, he is not, in official language, designated as *General Jackson*, but as 'the President of the United States,' and that his communication was made in that character."

The body of this letter is a detailed and spirited vindication of the President and of his message, against the several criticisms in the French minister's note, yet its final tone is an ingenious appeal for the preservation of peace. The following are its closing paragraphs: —

"I have no mission, Sir, to offer any modification of the President's communication to Congress; and I beg that what I have said may be considered with the reserve that I do not acknowledge any right to demand, or any obligation to give, explanations of a document of that nature. But the relations which previously existed between the two countries, a desire that no unnecessary misunderstanding should interrupt them, and the tenor of your Excellency's letter, (evidently written under excited feeling,) all convinced me that it was not incompatible with self-respect and the dignity of my country to enter into the detail I have done. The same reasons

induce me to add, that the idea, erroneously entertained, that an injurious menace is contained in the message, has prevented your Excellency from giving a proper attention to its language. A cooler examination will show, that, although the President was obliged, as I have demonstrated, to state to Congress the engagements which had been made, and that in his opinion they had not been complied with, yet, in a communication not addressed to His Majesty's government, not a disrespectful term is employed, nor a phrase that his own sense of propriety, as well as the regard which one nation owes to another, would induce him to disavow. On the contrary, expressions of sincere regret that circumstances obliged him to complain of acts that disturbed the harmony he wished to preserve with a nation and government to the high character of which he did ample justice.

"An honorable susceptibility to everything that may, in the remotest degree, affect the honor of the country, is a national sentiment of France; but you will allow, Sir, that it is carried too far when it becomes impatient of just complaint, when it will allow none of its acts to be arraigned, and considers as an offence a simple and correct examination of injuries received, and as an insult a deliberation on the means of redress. If it is forbidden, under the penalty of giving just cause of offence, for the different branches of a foreign government to consult together on the nature of wrongs it has received, and review the several remedies which the law of nations presents and circumstances justify, then no such consultation can take place in a government like that of the United States, where all the proceedings are public, without at once incurring the risk of war, which it would be the very object of that consultation to avoid."

Livingston now felt a keen anxiety to hear an approval of his conduct by the President and people at home, for which he was obliged to wait until late in March. Under date of the 8th of that month, Mr. Van Buren wrote to him: —

"Mr. Forsyth met me this morning at the President's with your last letter to de Rigny, and we went through it very deliberately. I could not express myself too strongly for the opinion I really entertain of its merits. Remember what I say to you, that hereafter, when the correspondence is published, it will be selected from the mass as giving the clearest, the strongest, and the best-tempered views of the matters in controversy. The General, as well as Forsyth, was delighted with it."

The President officially informed Mr. Livingston, not only that his course was warmly approved, as wise and patriotic, but that, if he had chosen to follow his inclination and abandon the mission, and had quitted France with the whole legation, that course would not have surprised or displeased the President. As it was, he was directed, if the appropriation should be rejected, to leave France in a United States ship of war, with all the legation; but, if the appropriation should be made, to retire to England or Belgium, leaving Mr. Barton as *Chargé d'Affaires*, and to await further instructions.

The Chamber of Deputies soon determined to appropriate the money, but, at the same time, to vindicate what it chose to consider the offended dignity of the nation. The bill was therefore passed on the 18th of April, with a proviso that the payment should not be made until the French government should have received satisfactory explanations of the terms used by the President in his annual message.

For such a posture of affairs Mr. Livingston's in-

structions did not provide, and he was obliged again to rely upon his own judgment in determining upon an important step, which was, to demand his passports and come home, leaving Mr. Barton at Paris as *Chargé d' Affaires.* He signalized his departure by a communication addressed to the Duc de Broglie, the Minister of State for Foreign Affairs, in which office he was the successor, as he had been the predecessor, of the Comte de Rigny. This paper, expressly conceived with a view to keeping open a door of peace between the two countries, contains the following piece of thorough argumentation and plain speaking: —

"The President, as the chief executive power, must have a free and entirely unfettered communication with the coördinate powers of the government. As the organ of intercourse with other nations, he is the only source from which a knowledge of our relations with them can be conveyed to the legislative branches. It results from this, that the utmost freedom from all restraint, in the details into which he is obliged to enter of international concerns and of the measures in relation to them, is essential to the proper performance of this important part of his functions. He must exercise them without having continually before him the fear of offending the susceptibility of the powers whose conduct he is obliged to notice. In the performance of this duty, he is subject to public opinion and his own sense of propriety for an indiscreet, to his constituents for a dangerous, and to his constitutional judges for an illegal, exercise of the power; but to no other censure, foreign or domestic. Were any foreign powers permitted to scan the communications of the Executive, their complaints, whether real or affected, would involve the country in continual controversies; for, the right being acknowledged, it would be a duty

to exercise it, by demanding a disavowal of every phrase they might deem offensive, and an explanation of every word to which an improper interpretation could be given. The principle, therefore, has been adopted, that no foreign power has a right to ask for explanations of anything that the President, in the exercise of his functions, thinks proper to communicate to Congress, or of any course he may advise them to pursue. This rule is not applicable to the government of the United States alone, but, in common with it, to all those in which the constitutional powers are distributed into different branches. No such nation, desirous of avoiding foreign influence, or foreign interference in its councils, — no such nation, possessing a due sense of its dignity and independence, can long submit to the consequences of this interference. When these are felt, as they soon will be, all must unite in repelling it, and acknowledge that the United States are contending in a cause common to them all, and more important to the liberal governments of Europe than even to themselves; for it is too obvious to escape the slightest attention, that the monarchies of Europe by which they are surrounded will have all the advantage of this supervision of the domestic councils of their neighbors, without being subject to it themselves. It is true, that, in the representative governments of Europe, executive communications to legislative bodies have not the extension that is given to them in the United States, and that they are, therefore, less liable to attack on that quarter. But they must not imagine themselves safe. In the opening address, guarded as it commonly is, every proposition made by the Ministry, every resolution of either Chamber, will offer occasions for the jealous interference of national punctilio; for all occupy the same grounds. No intercommunication of the different branches

of government will be safe; and even the courts of justice will afford no sanctuary for the freedom of decision and of debate; and the susceptibility of foreign powers must be consulted in all the departments of government. Occasions for intervention in the affairs of other countries are but too numerous at present, without opening another door to encroachments; and it is no answer to the argument to say that no complaints will be made but for reasonable cause, and that of this the nation complained of being the judge, no evil can ensue. But this argument concedes the right of examining the communications in question, which is denied: allow it, and you will have frivolous as well as grave complaints to answer, and must not only heal the wounds of a just national pride, but apply a remedy to those of a morbid susceptibility. To show that my fear of the progressive nature of these encroachments is not imaginary, I pray leave to call your Excellency's attention to the enclosed report from the Secretary of State to the President. It is offered for illustration, not for complaint. I am instructed to make none. Because the government of France has taken exceptions to the President's opening message, the *Chargé d'Affaires* of France thinks it his duty to protest against a special communication, and to point out the particular passages in a correspondence of an American minister with his own government, to the publication of which he objects. If the principle I contest is just, the *Chargé d'Affaires* is right; he has done his duty as a vigilant supervisor of the President's correspondence. If the principle is admitted, every diplomatic agent at Washington will do the same, and we shall have twenty censors of the correspondence of the government and of the public press. If the principle is correct, every communication which the President

makes, in relation to our foreign affairs, either to the Congress or to the public, ought in prudence to be previously submitted to these ministers, in order to avoid disputes and troublesome and humiliating explanations. If the principle be submitted to, neither dignity nor independence is left to the nation. To submit even to a discreet exercise of such a privilege would be troublesome and degrading, and the inevitable abuse of it could not be borne. It must, therefore, be resisted at the threshold, and its entrance forbidden into the sanctuary of domestic consultations. But, whatever may be the principle of other governments, those of the United States are fixed: the right will never be acknowledged, and any attempt to enforce it will be repelled by the undivided energy of the nation."

In these scenes and labors, Livingston did not forget his plan for the reformation of penal law, which he had designed, not only for Louisiana, but for the world. He distributed the work wherever he thought it could be useful, and sent copies to strangers among the rising men whose influence he thought might aid in securing its examination by legislators and publicists. The acknowledgments he received were of a character to satisfy whatever desire for applause was mingled with the philanthropy which had inspired his patient labors in framing and explaining his system. M. Villemain wrote to him, thanking him for his "precious gift," and saying, "I study it with the profound interest which such a work, without example from the hand of any one man, inspires." He added, "It is impossible not to be struck with an order so luminous, so simple, and with such deep philosophy in a matter so long given up to barbarism and subtlety. Very certainly, such a reform in penal jurisprudence reflects more credit upon our modern times

than the greatest discoveries in the arts, in literature, and in science; in fact, it is the perfecting of the first of sciences, — social science. The special report of the introduction to the Code of Crimes and Punishments has not less interested me, from the grandeur and simplicity of its aims; and even the phraseology of the enactments you propose presents a conciseness, a clearness, and, if it may be so expressed, a probity of diction, (*probité de langage*,) which cannot be too much admired." Victor Hugo, then a young man, but already renowned for those literary labors, aiming towards the social benefit of the more suffering part of mankind, in which he is even at this moment, with a large increase of fame, definitely persevering, wrote to Livingston the following letter: —

"MONSIEUR: Vous m'envoyez un beau livre, — un livre utile, — un livre modèle. Je vous remercie. Dès que mes mauvais yeux malades me le permettront, je m'empresserai de lire les passages que vous me faites l'honneur de m'indiquer dans l'ouvrage entier. Permettez moi de vous dire en attendant que depuis longtemps je connais vos travaux. Vous êtes du nombre des hommes qui ont le plus et le mieux mérité de l'humanité dans ce siècle. Vous êtes plus heureux que nous dans votre pays. Vous défrichez un sol vierge; vous pouvez réaliser les idées à progrès en moins d'années que nous n'en mettons ici à les discuter; vous assistez vivans à la moisson du grain que vous avez semé; nous, nous avons tout au plus l'espoir que d'autres le récolteront sur notre tombe.

"C'est un devoir pour les hommes avancés de tous les pays de se tendre la main. La grande pensée qui les occupe, l'amélioration du sort général de l'humanité, leur est comme une commune patrie, placée au dessus de toutes les délimitations de langues, de climats, et de

frontières. Permettez moi donc, Monsieur, de vous regarder comme un compatriote, et de vous prier d'agréer avec tous mes remerciemens l'assurance de mes sentimens de cordialité et de haute considération.

"VICTOR HUGO.

"27 Mars, 1834."

Neither this height of reputation which his code had brought him, nor the constant and anxious labors of his mission, nor any lassitude of advanced age, caused Livingston to lose a single opportunity of extending the public knowledge of his system. Under his pen, the subject was never trite, the reiteration of his views never wearisome. He could clothe the old thoughts in a new dress as often as occasion demanded, and could always invest with a fresh interest the same topics which, years before, he had seemed to exhaust. His ardor and his eloquence came from an unfailing source. Never had he enforced his general views with more zeal or greater spirit than in a long letter responsive to a communication he received, in February, 1835, from the Howard Society of New Jersey. The following passages are parts of this letter: —

"Every citizen ought to impress on his representative the absolute necessity of the reform without which the best penal laws are ineffectual. Let him be told that it is his particular duty to correct this abuse; that he cannot shift it off on the collective body to which he belongs; that he and all who, like him, are silent on this subject, are the moral murderers of hundreds who, from the impure contact which his negligence continues to force upon them, are cut off from society, or live only to prey upon it; bid him act, and act promptly; that, if his habits of life do not enable him to prepare the neces-

sary laws, it is his duty to urge those who are equal to the task to perform it. Let him use one half the exertion that he would for chartering a bank or building a bridge, and the work will be done, and it will be worth more than all the banks that were ever chartered, and all the canals that were ever dug. I have for years urged, in writing and in conversation, this indispensable reform, which lies at the bottom of all sound penal legislation. Every day I am more convinced of its necessity. I seize the opportunity which your letter affords of reiterating my efforts. Those of your Society will, I trust, prove more effectual than mine have been, and enable New Jersey to set an example to her neighboring States which they cannot fail to follow.

. . . . . .

"I cannot conclude without expressing an earnest hope that your Society may see the necessity of employing its collective influence and that which the high character of all and the station of many of its members individually give them, to endow your State with that which no State has yet had the happiness to possess, a complete system of penal law, resting on the great preventive basis of general education, religious, moral, and literary, and of which all the parts shall be adapted to each other.

"No country, I repeat, has ever had such a system; and none will have it as long as the patchwork plan, of applying remedies only when evils become intolerable, shall be pursued.

"New Jersey has an opportunity of rising to a proud preëminence, in jurisprudential legislation, above her two powerful neighbors, by constructing the whole of the new machine, and putting it at once in motion, while they are trying separately the effects of some of its detached springs and wheels. These partial experiments become

less efficient, and sometimes totally fail, because the institutions on which they are made are unsupported, and thus bring discredit on the whole system. Thus the penitentiary plan loses one half its efficiency and many of its advocates, because it is counteracted by indiscriminate confinement before trial, and is not supported by proper laws to regulate pauperism and vagrancy. If one State could be prevailed on to give the plan a fair trial, by a connected series of well-adapted institutions, my life for it, the effects would exceed the most sanguine expectations; and, if it failed, how easy to return to the present system, if system it may be called, which consists only of detached parts.

. . . . . .

"Although the education which I received in New Jersey was sadly imperfect, interrupted by the military operations of the Revolution, and unaided by the numerous professorships, the libraries and apparatus, which now offer themselves to the more favored students of modern times, I yet feel an attachment to the State in which this slight foundation was laid, and would be most happy to add, in any way, to its honor and the prosperity of its inhabitants. Good laws, faithfully executed, will secure both more effectually than great cities or extensive territory. The first are within your reach; the other fortunately you do not possess, for I think they would impede rather than aid your progress to the high eminence the first will enable you to attain."

The first few months of Livingston's residence in France were the last months of Lafayette's life. During this period, the efforts of the Minister to secure the fulfilment of the treaty were warmly seconded by the illustrious Franco-American, both in the Chamber of Deputies, of which he and his son were members, and out of it. The social intercourse of the two ancient

friends was now constant and mutually delightful. The following letter to Livingston was, certainly, one of the last ever dictated by Lafayette. The body of it is in the handwriting of an amanuensis; but the signature, feebly executed, is his own. Three days after its date, the attack which it mentions took a more acute form, and, on the 19th of the same month, he expired.

"*Paris*, May 6, 1834.

"Since I had the pleasure to see you, my dear friend, I have had an attack of gouty fever, which kept me in my bed. I hope it is or will be soon over. I have received a letter from the Abolition Society of Glasgow, a respectable association it appears, the Lord Provost and principal men being at the head of it. They have made me an honorary member, and mean to do so for other members of the House; but they so strenuously complain of the state of society in that respect in a part of the United States, and request my answering a few questions, which perhaps will not please them so much as if I was to go along with them in the reproaches. You know I would this moment have my right arm cut off to rid the United States of that lamentable evil. Yet I do not think that foreign, and particularly British, lectures will much advance the general disposition in that respect. I wish confidentially to communicate my answer to you.

"I see you cannot get the papers from the Department of Foreign Affairs. This whole business is strange.

"There was a sad report spread yesterday in the *juste milieu* circles: they were saying that a telegraphic despatch had arrived announcing, that, in the rejoicing of the French and foreign navies at Toulon, for the St. Philip, one of the guns of an American frigate had been carelessly loaded, or left loaded, with a cannon-ball, and that

one Frenchman had been killed and three wounded. I still hope it is not true. When you hear anything of it, or receive any letter to the contrary, be pleased to let me know it.

"How are you, and when do you go? Send me my letter back to-morrow morning, for it is near two months since I received theirs. With my fellow-citizens of the South you know I have been more plain and earnest on the subject than any man living; but I do not like to treat the matter with foreigners, particularly with those whose ancestors have entailed the evil upon us.

"Your affectionate friend,

"LAFAYETTE."

In the autumn of 1834, Mr. Livingston, accompanied by his wife and Mrs. Barton, made a journey through Switzerland and Germany. He enjoyed it greatly, though the primary object of the trip was to shake off an intermittent fever which he had contracted, and from which it had the effect to restore him.

At Geneva, he was entertained by M. de Sellon, an active philanthropist, who showed him a monument in the form of a temple, which he had, the year before, erected and consecrated "to the inviolability of the life of man." On the *façade* of this monument were twelve inscriptions, engraved in the marble, to the memory of as many great names, including those of Fenelon, Beccaria, and Wilberforce. One of these inscriptions was as follows:—

A
LIVINGSTON.
IL DEMANDA
L'ABOLITION DE LA
PEINE DE MORT A
L'AMERIQUE.

On the same journey, when at Heidelberg, he sent his card to Professor Mittermaier, the voluminous and enlightened advocate of jurisprudential reforms, who has lately been styled a German Brougham, with whom, during the preparation of the penal code, he had had some correspondence, but whom he had never seen. The Professor immediately called at his hotel, and, on being shown to his room, rushed into his arms, hugged and kissed him, to the astonishment as well as amusement of Mrs. Livingston and her daughter, not to speak of the embarrassment which such a form of salutation must have caused to Livingston himself.

The following passage shows how a statesman and reforming jurist, though past his seventieth year, may make the transition "from grave to gay," and enter for a time into the very spirit of the younger and less thoughtful crowd. It is taken from a letter written by Livingston to Dallas in December, 1834.

"Tell Mrs. Dallas that her townswoman, Mrs. W., is making the greatest sensation in all the fashionable circles. On her first arrival I had the pleasure of introducing her at Lady Granville's *soirée*, which happened to be a very crowded one. It is impossible to describe the effect produced by her entrance. 'Who is she? Where does she come from? How beautiful! How graceful! How modest! How well dressed! An angel! A Hebe!' was exclaimed by an hundred voices; and this, although," etc., etc.

Men who possess extreme gentleness of temper do not lack opportunities for its exercise; and if Livingston was never known to be angry, it was not for want of what most persons would esteem abundant provocation. At Paris he was unfortunate in the choice of a *valet de chambre*, a mulatto who had been highly commended to him.

This man was ingenious in dereliction, and at length had to be discharged. The following was his last performance while in Mr. Livingston's service. The latter sent his watch by him to a maker's, to be repaired. On his return he reported that the work would be done by a certain time. The period passed; he was sent to bring the watch home. He came back with a message that the repairs were not yet finished. This was repeated several times, and at last Mr. Livingston, in his mildest but firmest tones, directed him to ask the maker to return his watch, whether mended or not. At this point the man fell upon his knees, and confessed, that, having urgent need of a small sum of money, he had left the watch, not at the maker's, but at the *mont-de-piété*. Mr. Livingston now seemed to feel that it was incumbent upon him to exhibit a good deal of wrath, and he rebuked the fellow with some severity; but he had no inclination to prolong the scene, and, hastening to the room where his family were sitting, his features beaming with mirthfulness, he told them the story of the unhappy *valet*, in a manner evincing that he was impressed by the ludicrous features of the misdemeanor, rather more than by its flagrancy.

Mr. Livingston, always a prompt and industrious letter-writer, while in France, besides a regular correspondence with many public men at home, including Andrew Jackson, James Madison, Daniel Webster, Edward Everett, George M. Dallas, Joel R. Poinsett, Charles J. Ingersoll, and others, continued to write often to his relations and friends. To his aged sister, Mrs. Garretson, he did not forget to send a minute account of the incidents of his outward voyage, including a singular dream. And he wrote for her, when she was in the eighty-third year of her age, a full report of his travels in Switzerland and

Germany. Of this last letter the following is a passage: —

"Your very affectionate and good letter reached me among the mountains of Switzerland, where I had gone for the benefit of my health. Thank God, it is now restored, and I am enabled without inconvenience to perform the duties of my place. Believe me, my dear sister, I feel the force of your reflections; but I cannot believe that a strict attention to the duties which our country or our situation in life require is incompatible with those due to our Creator. I endeavor, therefore, to reconcile them. If I could think this were impossible, I would at once renounce the former; for with you I am persuaded that the last is of paramount importance."

During the first year of General Jackson's administration, Mr. Livingston's brother-in-law, Auguste Davezac, who in the campaign for the defence of New Orleans had attained the military rank and title of Major, was despatched as *Chargé d'Affaires* of the United States at the Hague. He was a much younger man than Livingston, for whom his respect was almost worship. He possessed, perhaps, more talent than judgment, and Livingston, who entertained the warmest affection for him, watched his diplomatic career with a parental solicitude. Both before and after going himself to France, he constantly conveyed to him, in the most gentle manner, such advice as he thought he might most stand in need of. The tone of all his letters to the *Chargé d'Affaires* was like the concluding sentence of one of them, in which, while Secretary of State, he informed him of his confirmation by the Senate and of a provision for credit with his bankers, — "Live prudently, happily, *et non nostri immemor.*"

Livingston could feelingly give to one whose welfare he had at heart the advice to live prudently. We have seen

how long and how severely he had himself expiated the want of common financial skill. The penalty for this innate defect he was destined to continue paying, in some degree, to the end. While he lived in France, though possessing a good deal of landed property, his command of ready money, beyond the inadequate salary of his office, was not sufficient to exempt him from anxiety and the practical study of economy. Shortly after reaching Paris, he wrote to Davezac that he hoped they would all meet at Montgomery Place in a year, or eighteen months at farthest. "In two years," he added, "the necessary expenses of an establishment here would embarrass me greatly." In the course of one of the earliest of his public despatches to the Secretary of State at Washington the following passage occurs: —

"I have, since my arrival, been living inconveniently in an hotel, taking time to get my establishment on a footing of economy united with the necessary respectability of my station; and I find that the four articles of house-rent, coach-hire, servants, and fuel will take about seven thousand dollars, leaving for all my other expenses, in this expensive capital, two thousand dollars. I make this statement, not because I can have any interest in it, for I am not rich enough to remain here until some remedy could be applied to the evil, but for the honor of the country, and to enable it to avail itself of the services of others than men of large fortune."

On receiving from the French government the passports which he had demanded, he felt a strong desire to make some further excursions, particularly in England, before returning home; but his sense of duty obliged him to forego this pleasure, in order to make the breaking up of the mission a perfectly unequivocal act. On the eve of his embarkation he wrote to Davezac: —

"*Havre*, 4th May, 1835.

"I was very happy, my dear Davezac, to find that you saw the condition annexed to the law providing for the payment of our indemnity in the light I do, and approved of my return. The necessity for this movement disappointed me, for I wished very much to pass some time with you and afterwards in England; but this was impossible after the refusal to pay, for such in effect is the annexation of a degrading condition. My stay in Europe would be considered as evidence of a desire to resume my mission.

"We shall probably now, my dear Davezac, meet no more, unless you should get tired of diplomacy before I die, which is not very probable. Whenever you do, come to Montgomery, and we will lead a happier, although less splendid life than at Paris or the Hague. . . . . And you, — how do your affairs at Amsterdam prosper? Let me know all about you when you write, which I hope you will do frequently.

"We have been here four or five days, waiting the arrival of the frigate from Cherbourg, where she went to take in water. She is just returned, and we embark to-morrow.

"God bless you, my dear Davezac,

"Yours affectionately,

"EDW. LIVINGSTON."

The frigate in which Mr. Livingston, with his family, was brought home was the Constitution, commanded by Commodore Elliott, which arrived at New York on the 23d of June. Intelligence of the state in which he had left the affair with France had preceded him, and prepared the country to express complete and universal satisfaction with his conduct. So general and popular was

the feeling, that crowds of people greeted him at the landing, and followed his carriage to the house of his brother, in Greenwich Street, in front of which they remained calling for him until he appeared at the door and said: —

"Fellow-citizens, I feel much happiness at your cordial welcome of my return, and beg to assure you that during my mission I have studied all that was due to the dignity of my country, its general interest, and its welfare."

Cheers greeted this concise speech, and the crowd dispersed. The next day, Mr. Livingston, in accordance with a request of the Common Council, held a public reception in the Governor's room at the city-hall. He received an invitation to a public dinner to be given in his honor, from a large meeting of citizens which assembled on the day of his arrival. The invitation, which was signed by Cornelius W. Lawrence, the Mayor, and by Preserved Fish, Enos T. Throop, Samuel Jones, Thomas J. Oakley, William Leggett, J. Fenimore Cooper, C. C. Cambreling, Theodore Sedgwick, Junior, John McKeon, and many others, contained the following paragraph: —

"Your fellow-citizens are desirous of giving you, upon your return to this your native State, that cordial welcome due to one who has done so much to illustrate the American name; to show by the warmth of that greeting that they place a just estimate upon the services of their public men, and that they understand and appreciate the embarrassment and harassing anxieties which have met you at every stage of this question; that they recognize in your recent acts the firm characteristics which have marked the whole of your eminent and useful public life; and that your unfaltering zeal, your wise aversion

to violent measures, and your proud and fervent nationality of spirit, command the unqualified respect and admiration of your countrymen."

Mr. Livingston accepted this honor, and at the dinner, which took place at the City Hotel, on the 16th of July, and at which the Mayor, Mr. Lawrence, presided, was toasted in the following terms: —

"Edward Livingston. As a patriot and statesman he belongs to America; as a jurist and philosopher, to the world. His exposition of the 25th April embodies the sentiments of his countrymen, and stands as a text-book for American diplomatists."

Upon rising to respond to this compliment, Livingston betrayed — I will not ask the statesmen of the present day to credit the fact — an unmistakable diffidence, such as has not often been witnessed in this country, whose public men, whatever other qualities they may have lacked, have not usually been wanting in self-possession. The following is the report of his opening remarks, which were received with demonstrations of general enthusiasm: —

"I had arranged some phrases which I thought might suit the occasion. But they are driven from my mind by the impulse which the scene around me most naturally produces. I find them tame, flat, powerless, to express the feelings by which I am excited, — agitated, — almost overpowered.

"Gentlemen, I did not expect this. I returned without having attained final success in my mission. I returned with the satisfactory, but humble consciousness of having done my duty; and I anticipated no other pleasure on my return than the greetings of personal friends, and that exquisite sensation which one who loves his country feels, when, after a long absence, his foot

presses his native shore. Such of you, Gentlemen, as have been abroad will understand this. But all of you must join me in lamenting, that the poverty of our language has no other word than the vague one of *country* to express the relation between it and its citizens. We have no derivative from the *patria* of the Romans, and have not adopted the *Faderland* of our Saxon ancestors. Nothing can be more appropriate to express the feeling, nothing more resembles filial duty and affection, than the obligation we owe to our native land, or the attachment which binds us by voluntary ties to the country of our adoption. But if we have not the word in our language, we have the sentiment in our hearts. Properly cultivated, it will teach us, not only to support our country on occasions like the present, when it can appeal to all nations for the uniform moderation and justice of its course, but, with the pious sons of the patriarch, to veil even the occasional excesses of our common parent from the eyes of the world, not, like their degenerate, unnatural brother, to exaggerate and expose them to derision,—to conceal, not to discover, the nakedness of the land,—to glory in its honor, to lament its misfortunes, to espouse its cause as our own, and identify ourselves with it in its prosperous or adverse fortune. This is patriotism, this is true love of country; and as it is common to all who hear me, I may be permitted to say, that it guided me in my conduct, cheered me during the difficulties of my mission, and that I looked to the consciousness of its having animated me for my best reward.

"I repeat, Gentlemen, that I did not expect the reception I have met with. But I should be guilty of an absurd affectation if I attempted to conceal the heartfelt pleasure it has given me. I thank you for myself. I

thank you more for my country; for I have not the vanity to believe that any merit of mine could excite the enthusiastic demonstrations that have been made; and my feelings of personal gratification were lost in the higher enjoyment of national pride, when, amid the shouts that greeted my arrival, the first words I could distinguish were those which reprobated any unworthy concession. Never within my recollection, in the course of a long political life, has public sentiment, on any question, been so strongly expressed, — expressed as it should be, calmly but with energy, without bluster, without violence, in the language of high-minded men, who appreciate their own character and the dignity of their country. In a settled determination to suffer no degrading interference with our legislative councils, all party feelings seem forgotten, and the assurance I gave to the French government on my departure, that every attempt of this nature would be repelled by the undivided energies of the nation, seems nobly confirmed."

The prominent names among those who conducted this public demonstration appear to have belonged mainly to members of one party, — that attached to General Jackson and his administration. The opposite party severely criticised the spirit which sought to have such a statesman, on such an occasion, all to itself. The "New York American," a journal of the opposition, observed upon the subject: —

"So far as this dinner was intended as a party demonstration, it was, we understand, quite successful, — the faithful who *are* in, and those who *expect* to be in, office attending in full numbers.

"So far as it was meant to pass, at home, for a compliment from his fellow-citizens at large, or to produce the impression abroad that all parties united in it, this fes-

tival was, of course, a failure. Therein we think the party managers sinned alike against good policy and good taste; for it is quite certain, such is the general satisfaction with Mr. Livingston's course as Minister in France, and especially with his last letter, that all sides would have cheerfully united in the compliment to him, — an occurrence that, of course, would personally have been more gratifying, and, for national effect abroad, greatly more striking. Party considerations, however, prevailed; though not, we are persuaded, with the concurrence or approbation of Mr. Livingston."

About the same time, Livingston was received, at a similar dinner in Philadelphia, with no less warmth of popular welcome. On the latter occasion he thus defined the position of the nation with respect to France: —

"The case that has drawn forth this noble expression of national feeling is of novel occurrence. Heretofore we have contended for rights withheld, for interests invaded: we contended manfully, successfully, but never with perfect unanimity. Now, we are called on to consider a question of national dignity, unmingled with any other consideration; and the country shows by its unexampled unanimity that it considers this last as of paramount importance. Lost rights may be recovered; the battles of freedom, though 'sometimes lost,' are, in the end, 'always won.' Injuries to interest may be repaired; but the reputation of a country once lost can never be regained.

"The people of the United States seem to be deeply sensible of this great truth; and the cry which I first heard on my arrival, of '*No apology! No concession!*' has been repeated by the unanimous voice of the nation from the seaboard to the mountains, from the mountains to the great lakes and the valleys of the Mississippi.

Not only all the prejudices of party seem lost in this national spirit, but strong personal interests give way to the patriotic feeling which prompts even those who are interested in the claims on France to reject, with disdain, the idea of purchasing their payment by an act of national dishonor. I renew, therefore, my congratulations to you and to the country on the noble spirit which pervades it."

In the course of the same speech he gave the following expression to the inherent, essential republicanism of his nature: —

"The occasion which has brought you together adds one more to the many preceding refutations of the charge of ingratitude against republics; for the people have, on this occasion, most generously repaid moderate services, ordinary talents, and humble efforts, by the highest of all rewards, their approbation and applause.

"No! republics are not ungrateful! The charge is made by the sordid and the vain, who think nothing valuable but gold, nothing honorable but titles, and that gaudy ribbons are the proper recompense for merit. No, Gentlemen, republics are not ungrateful, but they are judicious in their choice of rewards. They do not give hereditary honors to virtue and wisdom, which may descend to folly and vice. They do not wring its earnings from the hard hand of labor, that they may be poured out in pensions on the idle and unworthy. They do not decorate with stars and spangled garters, with ribbons and crosses and gewgaws, men who, if they have done anything that may seem to have deserved these childish toys, may afterwards prove unworthy of the decoration. But they give a nobler, a higher recompense for services, — they give their confidence; and the seal of their approbation is a prouder distinction than any that dangles

from the button-hole, or is embroidered on the breast of the titled courtier; and I feel myself more honored as well as gratified by the applauding voice of my fellow-citizens, by the grasp of their friendly hands, some of them hard with honest labor, by their countenances, beaming with the fire of patriotism, — infinitely more honored, than I could be by any titular appendage to my name that a monarch could bestow."

It is perhaps superfluous to add that the whole conduct of Livingston while abroad received the hearty applause of the President and of all the members of the administration. Indeed, not the administration only, but all parties, in Congress and the country, were in this sentiment unanimous, and unanimous in a determination to go to war with France, if necessary, but never to give her the required explanation, — a determination which furnished the subject of one of the most impassioned and effective bursts of oratory from John Quincy Adams, the venerable ex-President, and leader of the opposition in Congress. The approbation of the President was officially communicated to Livingston by the Secretary of State, in a note, responsive to his letter resigning office, which not only applauded his whole conduct while in France, and especially his parting letter to the Duc de Broglie, but referred to the regard and respect which many years of intimate association in peace and war had inspired in the President's breast, and declared that, although they had differed on some points of general policy, the minister's singleness of purpose, perfect integrity, and devotion to his country, had been always known to the President, who trusted that his friend's retirement might be but temporary.

CHAPTER XVIII.

CONCLUSION.

Retirement of Livingston to Montgomery Place — Pursuits, Associations, and Views — Visit at Washington — Last Appearance in the Supreme Court — Allusion to Jefferson — Mr. Barton's Return from France — Culmination of the Difficulty between the two Governments — Letter of Advice from Livingston to the President, respecting the Message to Congress on that Subject — Mediation in the Affair by Great Britain — Settlement of the Dispute — Extract from Livingston's Last Letter to his Wife — Return to Montgomery Place — Illness and Death — Honors paid to his Memory — The Author's View of Livingston's Character.

LIVINGSTON now retired to Montgomery Place, with leisure to watch the daily changes in its foliage, its scenery, and its prospects. For more than thirty years, in the midst of labor, excitement, and suffering, he had sighed for this kind of repose, and the habits acquired in so long a period of activity had not disqualified him for enjoying it, when finally attained. Some of his letters, written during the following months, picture warmly the delights of "a gorgeous fall foliage, listless sauntering, and nothing to do." Reading, correspondence, and long walks, upon which he sometimes carried his fishing-rod or fowling-piece, formed his principal occupation. An experiment which he made in transplanting, upon the lawn, in the month of August, a large locust-tree, afforded him a subject of the most lively interest.

In the neighborhood of Montgomery Place were the country-seats of his brother, John R. Livingston, and of most of his surviving relatives. It would be difficult to paint in too strong colors the pride and affection with

which he was regarded by this circle. He had been the youngest and the favorite, as we have seen, of the old family household; those who still lived had, with true solicitude, watched his career during the long struggles through which he had passed, and now his achievements and fame were in some sense their reward as well as his own. His intellect had never been brighter, his manners never more genial, his affections never warmer than now. By all his intimate acquaintances he was looked upon as one of those rare men who, without any definite blemish upon their virtue or their temper, are nearly—for even human partiality has never pronounced any man to be entirely—perfect. The venerable Mrs. Garretson, who had been his playful correspondent sixty years before, who had followed his whole growth and career with a sister's, almost a mother's tenderness, and who certainly cherished a sound faith in the doctrines of the Methodist church, of which she had long been a member, used at this period to repeat an observation which seemed almost to imply that she found it difficult to understand how a natural heart such as his could need regeneration.

The President, on receiving his resignation, had officially said that he trusted his retirement would be but temporary; but I do not find that he himself entertained any definite expectation of, or desire for, further public employment, though the following paragraph from a letter, dated the 1st of November, to one of the closest of his political friends shows that there were two offices to either of which he would not have been averse, if it had been fairly open to him:—

"I answer you, my dear Dallas, as you desire, sincerely and very confidentially. I am not very desirous of place, but I cannot, while I enjoy my present state of

health, be entirely idle. Yet there are but two situations which have any attractions for me: the one I occupied at home, and the mission to England abroad, neither of which is there any chance of my obtaining; so that I shall most probably remain where I am, watching the hues of the revolving year, — as reasonable an occupation, and probably as profitable a one, as any that political life would afford."

To his son-in-law, who remained in France as *Chargé d'Affaires* of the United States, he had written in the month of August: —

"I wish you were with us, my dear Barton, in this delightful retirement, which does not lose its charms for me by the comparison I make between its natural beauties and the highly improved grounds of England. I feel the same interest that I formerly felt in walking through the rough walks in our woods, and in planning new ones; but I want you to help me."

In January, 1836, he visited Washington, to attend the term of the Supreme Court, where he was engaged to appear professionally in the case of the Municipal Authorities of the City of New Orleans, appellants, *versus* The United States, respondents. He was senior counsel for the appellants; his junior associate was Daniel Webster, and the other side was very ably represented by Benjamin F. Butler, Attorney-General of the United States. The discussion was opened by Mr. Webster. Mr. Butler, in the course of his argument, and in support of some of his positions, cited largely from Mr. Livingston's answer in the Batture case, and in such terms of respect and approval as elicited from the latter, in his closing address to the court, this digression: —

"The reference to the pamphlet from which the argument has been drawn, the flattering terms in which the

Attorney-General has been pleased to speak of it, and the possibility that in looking at it the court may recur to other parts than those immediately relating to the questions before them, oblige me to ask their indulgence for a single observation, irrelevant, it is true, to the case, but which I am happy to find an opportunity of making. That pamphlet was written under circumstances in which the author thought, and still thinks, he had suffered grievous wrongs, — wrongs which he thought, and still thinks, justified the warmth of language in which some parts of his argument are couched, but which his respect for the public and private character of his opponent, always obliged him to regret that he had been forced to use. He is happy, however, to say that at a subsequent period the friendly intercourse with which, prior to that breach, he had been honored, was renewed; that the offended party forgot the injury, and that the other performed the more difficult task (if the maxim of a celebrated French author is true) of forgiving the man upon whom he had inflicted it. The court, I hope, will excuse this personal digression; but I could not avoid using this occasion of making known that I have been spared the lasting regret of reflecting that Jefferson had descended to the grave with a feeling of ill-will towards me." *

Whilst Mr. Livingston was at Washington on this occasion, Mr. Barton reached the capital on his return from France. He had been instructed to ask for the final determination of the French government as to the payment of the instalments due under the treaty, and, in case of a refusal to make the payment without further explanations, to return to the United States. These instructions he had followed; and the French Minister of

* 10 Peters's Reports, 691.

Foreign Affairs had communicated to him the determination of His Majesty's government to pay the money as soon as that of the United States should have expressed its regret at the misunderstanding which had arisen between the two governments, and should have made some further assurances, of which the minister, allowing himself a very broad latitude in construing the requirements of the law under which he was acting, proceeded to dictate the form.* Mr. Barton had thereupon demanded his passports, and, leaving the papers of the legation in custody of the consul of the United States, hastened to Washington to report the affair personally to the President. Mr. Livingston, whom he found there, accompanied him to the White House. On their way thither, they were joined by the Vice-President and the Secretary of State, who during the walk betrayed a good deal of anxiety as to the matter of the statement about to be made. This did not escape the notice of Mr. Barton. Turning to them as they were about to enter, he inquired of them, in a tone half playful, half earnest, —

"Well, Gentlemen, shall it be oil or water?"

"Oh, water, by all means!" exclaimed both, in the same breath.

* The proviso annexed to the law which authorized the fulfilment of the treaty forbade the payment of the money until "the French government should have received satisfactory explanations with regard to the message of the President of the Union, under date of December 2, 1834." — *Moniteur* of 19th April, 1835. What the French government chose to regard as "satisfactory explanations" will appear from the following extract from the Duc de Broglie's note referred to in the text. "We will pay the money," said he, "when the government of the United States is ready, on its part, to declare to us, by addressing its claim to us officially, in writing, that it regrets the misunderstanding which has arisen between the two countries; that this misunderstanding is founded on a mistake; that it never entered into its intention to call in question the good faith of the French government, nor to take a menacing attitude towards France." And he added, "If the government of the United States does not give this assurance, we shall be obliged to think that this misunderstanding is not the result of an error."

"That, Gentlemen, will, I think, be the effect of what I shall have to say."

Mr. Livingston, during the whole time that had passed since Mr. Barton's arrival, had carefully avoided any question as to the nature of the communication which the latter might think it his duty to make. Feeling, certainly, no less solicitude than his companions as to the possibly momentous result of the interview about to take place, he yet entirely confided in his friend's discretion, — a delicate forbearance which the young man could not but feelingly appreciate, and which he acknowledged by a pressure of the hand at the moment when they were on the point of entering the room of the excited President.

Jackson, immediately after the interview, prepared a special message to Congress, which he submitted to the judgment of Livingston. The latter disapproved the paper, and drew himself a substitute, which he sent to the President with the following note: —

"January 11, 1836.

"My Dear General: Professions on my part, in communicating with you, would be worse than useless: they would imply a suspicion that there was a want of confidence which for twenty years has been uninterrupted. During that time you have known my attachment to your person, and my desire to promote your public reputation, always identified in my mind with the glory of our country. I, therefore, though no longer one of your official advisers, take the liberty, at times, of offering my advice freely on subjects where I think it may be of use.

"Such a case now occurs. The message about to be delivered is one of no ordinary importance: it may pro-

duce war or secure peace. Should the French government be content to receive your last message, they will not do so until they have seen this. There should not, therefore, be anything in it unnecessarily irritating. You have told them home-truths in the first. You have made a case that will unite every American feeling on the side of our country. It cannot be made stronger, and to repeat it would be unnecessary. The draft you did me the honor to show me would make an admirable manifesto or a declaration of war; but we are not yet come to that. The world would give it that character; and, issued before we know the effect of the first message, it would be considered as precipitate.

"The characteristics of the present communication ought, in my opinion, to be moderation and firmness. Our cause is so good, that we need not be violent. Moderation in language, firmness in purpose, will unite all hearts at home, all opinions abroad, in our favor. Warmth and recrimination will give arguments to false friends and real enemies, which they may use with effect against us. On these principles I have framed the hasty draft which I enclose. You will with your usual discernment determine whether it suits the present emergency. At any rate, I know that you will do justice to the motive that has induced me to offer it.

"Yours,

"EDW. LIVINGSTON."

The reader who examines the message which was sent to Congress, dated the 15th of January, 1836, will find that it is not "a declaration of war," nor in any sense "violent," but that its "moderation in language" is equalled by its "firmness in purpose." Indeed, its tone of determination, though quiet, is intense. It produced

the best effect possible. England immediately afterwards offered her friendly services as mediator between the United States and France. General Jackson promptly accepted the offer, but with distinct notice and open reservation that his government would never recede from the ground it had taken. This kind of judicial submission, in which one party decides the cause in his own favor beforehand, may seem ludicrous, but it really took place in this important international case; for France also accepted the proposed arbitrament, notwithstanding the vital reservation on the part of the United States, and the mediator seemed prepared to decide as General Jackson had already done; but France saved England the trouble by declaring herself ready to pay the money, and the disturbed ancient amity of the two nations was happily and at once restored.

This visit at Washington was Mr. Livingston's last absence from his family, and the occasion of the last of his letters to them. Of these, the following is an extract from the latest one, dated February 5, 1836:—

"How can you say, my dearest wife, as you have done in several of your letters, that you can do nothing to secure the happiness of our family, and that all the merit is mine? What have you done for these thirty years past but to direct me by your wise suggestions, to restrain me by your prudence from rash undertakings, to encourage me in every honorable and useful pursuit, and to console me under afflictions and disappointments that would have overwhelmed me and made me relinquish every effort, if you had not been at my side to teach me how to bear them? What I am I owe chiefly to you; and I will not permit you to undervalue the aid you have given me."

Mr. Livingston passed the remainder of the winter in

New York, and early in the spring was once more among his buds at Montgomery Place. He anticipated a summer of tranquillity and complete happiness. The correspondence which his hold upon public attention, at home and abroad, imposed, formed no drawback to his ease; for he despatched it as if it were a recreation, though with methodical exactness. His capacity for enjoyment was in no way impaired, except by a partial deafness which had been growing upon him gradually for many years. His relish for out-of-door occupation was as strong as it had ever been. About the middle of May, he planned an excursion to Long Island for trout-fishing, in company with one or two friends.

In the night preceding Saturday, the 21st of the month, he was taken suddenly and violently ill with bilious colic. During the next two days he obtained scarcely any relief from excruciating bodily pain, his vigorous constitution and unimpaired strength only adding to the agony of his sufferings. He bore them with the quiet fortitude which nature had given him, and which had been perfected by the lessons of misfortune and grief. Urbanity and habitual consideration for the interests and feelings of those about him continued to mark his demeanor as much as they had done while his health was perfect. When an old family servant who had injured his foot entered his room, he gently reproved him for his imprudence in coming up-stairs, but thanked him for the feeling which had prompted the exertion.

He was delirious for a few hours, during which time he spoke of nothing but his rural pursuits, his eyes sparkling as he dwelt proudly upon his success in transplanting the locust in full leaf, and repeated with animation that it would revolutionize that part of horticultural proceedings. Speech left him after his return to conscious-

ness; but he still welcomed, with an extended hand or a benignant smile, those who approached his bed.

On Monday, the 23d of May, 1836, within five days of the completion of his seventy-second year, he expired, easily, serenely, and cheerfully, surrounded by his family and many of his friends. His sister, the pious Mrs. Garretson, then eighty-five years of age, had been constantly with him during his brief illness.

To those who had known him his death seemed premature; for no one had come to regard him as an old man. It was remarked that his black hair resting upon the pillow of his coffin presented a striking contrast with the record of his years inscribed upon the lid.

His remains were laid beside those of his mother, in the vault of the family at Clermont, the place of his birth. A plain tablet, placed by his wife and daughter in the Dutch Reformed church at the village of Rhinebeck, bears a simple inscription, describing him as "a man, for talents equalled by few, for virtues surpassed by none."

Montgomery Place, possessed by his widow till her death in 1860,* and since then by their daughter, Mrs.

* Mrs. Livingston passed her widowhood of nearly a quarter of a century in complete retirement. She died, as for many years she had lived, a member of the Methodist church. No circumstance was wanting to perfect the contrast between the beginning and the close of her days. The memory of her husband, his character, his actions, and his fame, continued paramount in her thoughts and conversation to the last. The following was one of her latest reminiscences of him, given to a friend, with temporary animation at a time when she was almost too feeble to converse. "On one of our returning journeys to New Orleans," she said, "we were travelling through the interior of Pennsylvania by stage-coach. As we were about to depart from one of the stations, my husband and myself occupying the back seat, and all the other places, but one, being filled, a plain man, holding by the hand a very pretty young girl, presented himself at the side of the vehicle, and carefully scanned the faces of all the passengers. After doing so, he turned to my husband and said, 'I was looking for some one to whom I might confide the charge of my daughter, who is obliged to travel without a protector for some distance. I think I must select you.' 'You judge rightly, my friend,' said I, 'you judge rightly; he has been the protector of innocence all his life.'"

Barton, remains much as he left it. His library and the rooms he particularly occupied have scarcely been disturbed. His locust-tree still flourishes upon the lawn. His gun, flint-locked and rusty, and his fishing-rod stand where he last placed them, in a corner of the library. In this room, — a square apartment, with plain shelves from floor to ceiling, — the writer passed some thoughtful days in reading the late occupant's large correspondence with many of the leading spirits and thinkers of his time.

The honors paid to Livingston's memory, publicly and privately, immediately after his death, were all that his reasonable ambition could have craved. "A purer, sweeter, or superior spirit," said Charles J. Ingersoll, "seldom has departed. He belonged to a peerage of which there are very few members."

The young Theodore Sedgwick, the third eminent man, in direct succession, of the name, wrote, "I shall never cease to rejoice that I had an opportunity, though how much too brief! of knowing one who was an honor no less to his race than to his country."

"I have lost a friend," was the language of another young and ardent admirer of his character, "whom pride, esteem, and affection conspired to make dear to me. Nor could I ever tell whether I loved or admired him most. His social and endearing qualities were equal to the splendor of his intellect and the glory of his life."

The common council of the city of New York, in publicly noticing his death, declared that he had been "a leader in every enterprise calculated to improve or adorn society. Whether in courts or camps, his philosophic mind seemed to comprehend within its ample limit the whole human race."

At the close of a long oration, devoted to a review of the life and character of the departed Academician, delivered before the new Academy of the Institute of France, M. Mignet, the historian, said, "By the death of Mr. Livingston, America has lost her most powerful intellect, the Academy one of its most illustrious members, and Humanity one of her most zealous benefactors."*

Of a like tenor was the general voice, not only of municipal bodies and political societies in several States, but of eminent men and of learned and philanthropic associations in America and in Europe. The Society of St. Tammany commemorated his death and that of the illustrious Madison, in the same series of resolutions. The Masonic General Grand Chapter of the United States, of which, as the successor of De Witt Clinton, upon the death of the latter, he had been since 1829, by three triennial elections, the official head, adopted, as a memorial forming a page of its records, an elaborate epitaph, reciting the principal events and actions of his life. The Guatemalan government ordered the observance of a public mourning for him.

Thus I have sketched the leading events of Livingston's life, as my researches have presented them to my own mind. The reflection which has proceeded from the task has, more than anything else, impressed me with the conviction, that, in biography as well as in history, complete accuracy is only to be approached,

* "Par la mort de M. Livingston, l'Amérique a perdu sa plus forte intelligence, l'Académie un de ses plus illustres associés, et l'humanité un de ses plus zélés bienfaiteurs." — *Éloge Historique de M. Livingston*, par M. Mignet, etc. etc. Paris, 1838.

not attained. At least, I can only pretend to have fairly reflected the actual impressions derived by one mind from a diligent study of abundant materials. I trust the reader has been furnished with sufficient facts from which to deduce for himself a satisfactory estimate of the genius and character of Livingston; while I follow a settled custom in tracing some outline of the conception I have myself formed.

In looking at the character of Edward Livingston, the quality which first invites attention is the very uncommon breadth of his sympathies. Whatever rightfully interests human beings, — government, laws, knowledge, science, taste, society, civilization, affairs, amusement, religion, — had always a genuine and hearty interest for him. This imparted the peculiar zest which he found in the simple acquisition of knowledge, — a zest which with him continued to be as keen in old age as it had been in youth, and which led to the variety and depth of his merely intellectual attainments, gained, as they were, during an unceasing whirl of active labor, care, and excitement.

The same quality, not less than simple benevolence, was the foundation of his philanthropy, in which there was not a tinge of bigotry or austerity. His scheme for the reformation of penal jurisprudence, cherished and worked upon during all his adult life, never became a rigid and unalterable theory, but was the subject of improving touches from time to time, such as came from continued reflection, or from new light laboriously gained.

From this pervading human interest came the practical, many-sided capacity which enabled him to pass rapidly through various employments, those of advocate, legislator, executive, judge, publicist, cabinet minister, and diplomatist, and to easily distinguish himself in

all, without ever ceasing to be a loving relative, a genial friend, and a jovial companion.

The innate democracy of his spirit proceeded from the same source. He estimated men, even kings, at what, upon candid scrutiny, he found to be their inherent value. Neither in his public writings and speeches, nor in the mass of his unpublished manuscripts which I have examined, have I discovered a word to indicate that he deemed his birth to be better than that of any other American citizen. He was proud of his brother's public services, of his father's virtues, and of his grandfather's accomplishments, but seemed scarcely to have heard that the family pedigree extended further. In his intercourse with men, public and private, he always stood squarely upon his intrinsic merits. When he undertook the office of Secretary of State, he solemnly measured his qualifications by those of his predecessor, and sincerely distrusted his own. A man of narrower, though equally powerful mind, might have found his judgment, in such a comparison, influenced in some degree by the fact that the other was a self-educated son of a farmer in the same county where his own family name had been a somewhat lordly one for several generations.

Considering his great abilities, his strong inclination to public affairs, and the circumstances which so greatly favored his political advancement, the moderateness of his ambition was a striking and singular trait. In his democratic opinions there was no mixture of demagogic views. Heartily aiming to win distinction, he was not accustomed to fear or court

"The rabble's noisy censure or applause."

The reputation which he desired and strove after he had no idea of attaining except by well and clearly earning it. I scrutinized the whole mass of draughts of letters

which he left, in order to see if a single sentence in them indicated that he had, at any time, aimed to reach a higher office than he enjoyed, namely, the Presidency of the United States; and it did not appear that such a thought ever entered his mind. In this he is a bright example, if they would only observe it, to those troops of scantily cultured men who coarsely aspire to the chief magistracy of a great nation, without taking anything like corresponding pains to make themselves qualified to adorn a station so exalted.

As for his intellect, it was one of general acuteness and uniform power, without any dull side or any dazzling gift; just as his writings and speeches present few salient, distinct, and quotable beauties, but rather a steady felicity, a constant power, and a pervading eloquence.

But this grand capacity was not perfectly rounded. One faculty it signally lacked. At no period of his life was he competent, practically, to manage financial affairs. In this one regard he was not much more than a child. It was as if a guardian genius had purchased for him gifts sufficing for all other emergencies, by debarring him from one important endowment which even the stupid often possess. If the dull favorites of Mammon ever envied his shining parts, they perhaps found comfort in the substance of the maxim from Chaucer, —

"The gretest clerkes ben not the wisest men."

His moral nature was a rare assemblage of contrasted virtues. The courage and force of will with which, at the age of forty, he set about the mending of his suddenly broken fortunes, the fortitude with which he afterwards bore up against the disappointments of twenty years, and the tremendous combative energy with which he conducted the controversy against Jefferson, would seem to be qualities of so hardy a

kind as to be likely to choke out some of the more refined principles which have their seat in the heart. But with him it was not so. Prosperity had not spoiled, and adversity could not sour him. During his long buffet with misfortune he did not become capable of harboring resentment; he "spoke no evil" of his adversaries; he grew eager to forgive the man who had inflicted on him what he never ceased to think was a capital injury: at the same time he made free sacrifices to local public good, and went through gigantic labors for the good of his whole race; while in the little things of every-day life he had abundant sympathy, and no scorn for the thoughts and feelings of all who came about him.

In the cardinal points of morality his life-long conduct appears to have been blameless. His writings, public and private, contain frequent traces of religious faith and religious sentiment, but no trace of theological views.

The single flaw which I have found in this character — in reality there may have been others which I have failed to perceive, but, if there were such, they must have been of a minor and not palpable sort, I am persuaded — sprung from the defective faculty which has been often noticed in these pages. The owing of debts after they are due, when it becomes a settled habit, even though starting out of pure misfortune, and not accompanied by any deliberate or conscious intention to do wrong, must, it would seem, beget in the course of a lifetime a less active consideration for the rights of deferred creditors than is consistent with a perfect sense of justice. This habit is the cause of shipwreck to many not unpromising characters; it is a rock of danger to any but the stanchest in general principle; and the suf-

fering which it always costs the man upon whom it gets fastened, however great or good he may be, furnishes, wherever it is seen, an important lesson.

From so much excellence this surely is a small deduction. After it is allowed as freely as it may be, the character of Livingston remains one in which we may say, speaking with the limitations which belong to all descriptions of finite worth, that there was nothing sordid, nothing false, nothing coarse, — a character on the whole singularly heroic, simple, and Christian.

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